

# Appendices

## Napa County Elections Code Section 9111 Report Fair Payment for Public Benefit Act

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Prepared by Kronick Moskovitz Tiedemann & Girard**
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General Fund Five Year Forecast  
Prepared by County Executive Office**

**Appendix A:**

**Notice of Intention to Circulate Petition for  
“The Fair Payment for Public Benefit Act”**

February 16, 2005

Mr. John Tuteur  
Registrar of Voters  
900 Coombs Street, Room 256  
Napa, CA 94559


Dear Mr. Tuteur,


Attached please find a copy of a proposed initiative measure entitled The Fair Payment for Public Benefit Act and a Notice of Intention to Circulate Petition.

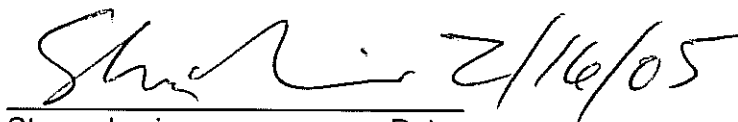
Pursuant to California Elections Code Section 9103, this is a request for a ballot title and summary to be prepared by County Counsel within 15 days.


If you should have any questions or need additional information, please use (707) 252-4087 (Mike Rodrigues) as a primary contact phone number.

Sincerely,

  
George Bachich                      Date  
4271 Dry Creek Road  
Napa, CA 94558

  
John M. Rodrigues                      Date  
4417 Dry Creek Road  
Napa, CA 94558

  
Steven Levine                      Date  
5233 Dry Creek Road  
Napa, CA 94558

  
Michael Haley                      Date  
5442 Washington Street  
Napa, CA 94558

**FILED**

FEB 17 2005

JOHN TUTEUR  
Napa County Recorder - County Clerk  
By  10:40am  
DEPUTY RECORDER - CLERK

**NOTICE OF INTENTION TO CIRCULATE PETITION**

NOTICE IS HEREBY GIVEN by the persons whose names appear hereon of their intention to circulate the petition within the County of Napa for the purpose of requiring a vote on the attached initiative, The Fair Payment for Public Benefit Act. A statement of the reasons of the proposed initiative is as follows:

Under current law the County can enact land use restrictions that significantly and adversely impact the value of private property, yet owe the impacted property owners nothing. The County position has been that if any economic value remains in an impacted property, then no "taking" has occurred and no compensation is due the property owner.

This policy is unfair to property owners, and should be changed. Individual property owners should not be forced to disproportionately bear the costs of securing public benefits. If land use restrictions are enacted to secure some public benefits, then the cost of securing them should be apportioned fairly among those who benefit.


The Fair Payment for Public Benefit Act is a voter initiative that provides that individual property owners suffering a decrease in property value caused by new land use restrictions be fairly compensated for their loss or be entitled to have the new restrictions removed.

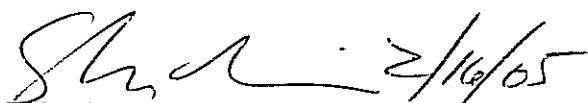
The Initiative does not change the Board's authority to enact new restrictions. It merely ensures that the Board will consider the costs of its actions and apportion those costs fairly.


The Initiative has no retroactive impact beyond its petition filing date. It does not change any zoning or allow any new uses. It does not change any existing land use regulations, nor does it require any compensation for losses caused by existing land use restrictions. It merely provides property owners some protection from new restrictions imposed after the petition filing date.

The Fair Payment for Public Benefit Act is reasonable and fair, and its provisions should have been part of County policy all along.

  
George Bachich  
4271 Dry Creek Road  
Napa, CA 94558  
Date 2/16/05

  
John M. Rodrigues  
4417 Dry Creek Road  
Napa, CA 94558  
Date 2.16.05

  
Steven Levine  
5233 Dry Creek Road  
Napa, CA 94558  
Date 2/16/05

  
Michael Haley  
5442 Washington Street  
Napa, CA 94558  
Date 2/16/05

**FILED**

FEB 17 2005

JOHN TUTEUR  
Napa County Recorder- County Clerk  
By \_\_\_\_\_  
DEPUTY RECORDER - CLERK

## The Fair Payment for Public Benefit Act

### Whereas the people of Napa County do hereby find that:

- a) The costs to secure public benefits from private sources should be borne by those who benefit, i.e., the public, and it is not fair to force some individuals to disproportionately bear those costs;
- b) Restrictions on the use of private property are usually imposed to secure a public benefit and those restrictions sometimes adversely affect that private property's market value.
- c) Napa County's policy to deny compensation to owners of such adversely affected property when any economic value remains in their property is unfair because it forces those property owners to bear a disproportionate share of the costs to secure those public benefits.
- d) Property owners whose property values are diminished as a result of securing a public benefit should be reasonably and fairly compensated for their loss in property values.
- e) Napa County currently has proper and sufficient property restrictions in effect to prevent rapid and disorderly growth, to protect its agricultural preserve, and to protect the environment, and Napa County cannot compensate property owners for the losses caused by those existing restrictions.

### Now, therefore, the people of Napa County do hereby ordain that:

- 1) Any owner of real property in the unincorporated area of Napa County who suffers an established decrease in value of that property due to the impact of a *New Napa County Land Use Restriction* shall be reasonably, fairly, and promptly compensated by Napa County in an amount equal to the established decrease in value, unless the Board of Supervisors chooses instead to immediately eliminate the adverse impact on the property value by rescinding or permanently waiving the *New Napa County Land Use Restriction* that caused the decrease in value; or unless the property owner and the Board of Supervisors jointly agree to a compromise solution.
- 2) The amount of the decrease in value shall be established by mutual agreement between the property owner and the Board of Supervisors. If agreement cannot be reached within 100 calendar days, then the property owner shall have the right to have the decrease in value established by a court of competent jurisdiction.
- 3) For purposes of this ordinance, "*New Napa County Land Use Restriction*" means any action by the Napa County Board of Supervisors to further limit or restrict the use of real property in a manner or to a degree that it was not previously limited or restricted. The following exceptions from this definition shall be construed narrowly in favor of a finding for compensation under this ordinance.
  - Exception 1: Actions to enforce regulations in effect prior to the date the notice of intention was filed by the proponents of this measure, including permit approvals, permit denials, and permit conditions pursuant to those prior regulations or pursuant to portions of new or revised regulations whose provisions are identical in substance to, or less restrictive than, the prior regulations.
  - Exception 2: Restrictions on activities commonly and historically recognized as public nuisances under common law.
  - Exception 3: Restrictions inherent in fire and building codes, health and sanitation regulations, or solid or hazardous waste regulations.
  - Exception 4: Restrictions mandated by State or Federal Law where the State or Federal law provides no discretion of any kind to the Board of Supervisors as to the manner by which the restrictions are implemented.
  - Exception 5: Restrictions mandated by State or Federal law where the State or Federal law provides discretion to the Board of Supervisors as to the manner by which the restrictions are implemented, and the manner by which the Board of Supervisors implemented the State or Federal law is approved by a majority of voters at the next countywide election occurring not less than 88 days after the date of the Board of Supervisors action.
- 4) If any part of this ordinance or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications which can reasonably be given effect without the invalid provision or application.

**Appendix B:**  
**Text of Elections Code Section 9111**

## **Appendix B: Text of Elections Code Section 9111**

### **§ 9111. Report from county agencies on effect of proposed initiative measure**

(a) During the circulation of the petition or before taking either action described in subdivisions (a) and (b) of Section 9116, or Section 9118, the board of supervisors may refer the proposed initiative measure to any county agency or agencies for a report on any or all of the following:

(1) Its fiscal impact.

(2) Its effect on the internal consistency of the county's general and specific plans, including the housing element, the consistency between planning and zoning, and the limitations on county actions under Section 65008 of the Government Code and Chapters 4.2 (commencing with Section 65913) and 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

(3) Its effect on the use of land, the impact on the availability and location of housing, and the ability of the county to meet its regional housing needs.

(4) Its impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space. The report may also discuss whether the measure would be likely to result in increased infrastructure costs or savings, including the costs of infrastructure maintenance, to current residents and businesses.

(5) Its impact on the community's ability to attract and retain business and employment.

(6) Its impact on the uses of vacant parcels of land.

(7) Its impact on agricultural lands, open space, traffic congestion, existing business districts, and developed areas designated for revitalization.

(8) Any other matters the board of supervisors request to be in the report.

(b) The report shall be presented to the board of supervisors within the time prescribed by the board of supervisors, but no later than 30 days after the county elections official certifies to the board of supervisors the sufficiency of the petition.

**Appendix C:**  
**Transcript of the Board of Supervisors Meeting**  
**August 9, 2005**



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BOARD OF SUPERVISORS  
NAPA COUNTY

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IN RE:     ITEM 9A - READ AND UNDERSTAND ACT  
          ITEM 9B - FAIR PAYMENT FOR PUBLIC BENEFIT ACT

TRANSCRIPT OF AUDIOTAPED PROCEEDINGS  
MEETING OF AUGUST 9, 2005

PRESENT:

- DIANE DILLON, Chairperson
- BRAD WAGENKNECHT, Supervisor
- MARK LUCE, Supervisor
- BILL DODD, Supervisor
- HAROLD MOSKOWITE, Supervisor

Transcribed by:     JOHN A. ZANDONELLA, CSR No. C-795



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3 CHAIRPERSON DILLON: We will now move to Item 9a  
4 on our Administrative calendar. County Counsel  
5 requests the board receive certification of sufficient  
6 signatures on the initiative known as the Read and  
7 Understand Act from the Registrar of Voters and take  
8 one of three actions as described in Elections Code  
9 Section 9118.

10 MR. WESTMEYER: Thank you, Madam Chair.

11 What the Elections Code requires is first to  
12 receive the certification from the Registrar of Voters,  
13 that sufficient signatures have been gathered.

14 You have his certification which indicates more  
15 than 10 percent but less than 20 percent has been  
16 gathered, which brings into play Section 9118 of the  
17 Elections Code, which in conjunction with 9111 of the  
18 Elections Code, after you receive the report, would  
19 require the Board to either adopt the initiative  
20 ordinance without change, within ten days ask for a  
21 9111 report on one or more of the various items  
22 identified in the staff report or order an election.

23 So once you've made a motion to receive the  
24 certification, your next question would be which one of  
25 those three alternatives you would want to choose.

1           If you choose ordering a report, the staff has up  
2 to 30 days to do that. And you would probably have to  
3 call a special meeting to receive that report unless  
4 you wanted the staff to bring back the report in 13  
5 days because of the Board's schedule.

6           Additionally, once the report is back, then you  
7 have two alternatives left which is either to adopt the  
8 ordinance without substantive change or order an  
9 election.

10          If you order an election in September when the  
11 report would come back, you would have to call the  
12 election for June of '06, because 1405 of the Elections  
13 Code provides that you cannot call a countywide  
14 election on initiative matters unless at least 88 days  
15 exists between the date you order the election and the  
16 date of the election.

17          That of course is to give the people plenty of  
18 time to review their position and discuss with the  
19 voters whether they should approve it or reject it.

20          In September, 88 days will no longer exist, and so  
21 you would have to put over the initiative election  
22 until the next statewide election -- it is more than 88  
23 days from September of '05 -- which would be June of  
24 '06, unless the Governor calls yet another special  
25 election sometime between November and June of '06. If

1 he did that, then we would reschedule the election for  
2 that special election.

3 I'll be happy to answer any questions.

4 CHAIRPERSON DILLON: Are there any questions for  
5 County Counsel?

6 All right. Is there any other member -- Registrar  
7 of Voters? No comment.

8 All right. Do we need to take an action to  
9 receive the certification?

10 MR. WESTMEYER: That would be my recommendation.

11 CHAIRPERSON DILLON: All right.

12 SUPERVISOR WAGENKNECHT: I guess I move we accept  
13 the certification.

14 SUPERVISOR DODD: Second.

15 CHAIRPERSON DILLON: We have a motion and a second  
16 to receive the certification of signatures from the  
17 Registrar of voters. All in favor.

18 (Ayes.)

19 CHAIRPERSON DILLON: Opposed? Motion carries.

20 So our next order of business is to take one of  
21 the three actions described by County Counsel.

22 SUPERVISOR: Madam Chair?

23 CHAIRPERSON DILLON: Yes.

24 SUPERVISOR: When do we want to take public  
25 comment on this item?

1 CHAIRPERSON DILLON: Oh.

2 SUPERVISOR: I'm assuming there might be some  
3 comment.

4 CHAIRPERSON DILLON: All right. Let's take public  
5 comment now. Anyone who wishes to comment on Item 9A.2  
6 which is regarding action that we're required to take  
7 with regard to the Read and Understand Act under  
8 Elections Code Section 9118. Anyone wishing to comment  
9 at this time?

10 MR. WESTMEYER: Well, before public comment, maybe  
11 I ought to add a couple of other thoughts so George  
12 could address them if he wants to.

13 There's really two issues. One is whether the  
14 text of the initiative should be included in the  
15 official ballot materials.

16 For the last few years we have prepared  
17 resolutions indicating it would not be included. And  
18 then in some situations the Board has decided they  
19 would rather include it so we make some minor  
20 adjustments to the resolution, and you can do that.

21 If you order a report, I would request that the  
22 Board advise staff today whether you would want to  
23 include the text or not so we wouldn't have alternate  
24 resolutions following receipt of the 9111 report.

25 The other issue relates to why the Howell Mountain

1 School bond election is gonna be published in the  
2 official materials but the initiative text may not be.  
3 That's purely a statutory situation in the Elections  
4 Code.

5 The Elections Code for County measures since about  
6 1989 has allowed cities and counties and districts  
7 actually, other than school districts, to decide  
8 whether they want to put text in the official ballot  
9 materials. And if they don't, they have to add a  
10 sentence following "my impartial analysis" which always  
11 has to be included, indicating that they can call the  
12 Elections Department and they'll be mailed a copy for  
13 free.

14 And then about a year ago they also authorized  
15 putting a statement that if you have access to the  
16 internet you can also access at that point.

17 For school bond elections, that's not the case.  
18 School bond elections, the language that was added in  
19 '89 allowing you not to put the text in the official  
20 ballot materials is missing from the school bond  
21 statute in the Elections Code.

22 So the Howell Mountain School District really  
23 didn't have any choice because there isn't any  
24 legislative authorization to do anything other than  
25 include the text of the school bond measure. But you

1 do have the option to include it or not include it  
2 insofar as County measures go, and cities and districts  
3 other than school districts also have that option. I  
4 don't know why Sacramento didn't include it for school  
5 districts but they didn't.

6 So that's why when we consolidated the Howell  
7 Mountain School bond election this morning at the  
8 request of the district, all of the material relating  
9 to the bond is gonna be included in the official ballot  
10 materials.

11 And the Board can decide this morning after  
12 hearing from the public whether they want to include  
13 the text of the initiative in the official ballot  
14 materials in regard to the two County initiatives.

15 CHAIRPERSON DILLON: All right. Thank you.  
16 Supervisor Dodd.

17 SUPERVISOR DODD: Yeah, I'm wondering, not to  
18 limit public, you know, comment but just to take this  
19 issue -- I think there are a number of issues that are  
20 gonna be discussed today.

21 I have no problem at all with including the text.  
22 The people that got the signatures, that's what they  
23 want. They went out and got the signatures. And I  
24 just have no problem with including the text of the  
25 initiatives on the ballot and in the voter pamphlet.

1           So I'm wondering if we can resolve that right now  
2 so that that doesn't have to be drug out with a lot of  
3 comment. I don't know if there's support on the Board  
4 or not.

5           CHAIRPERSON DILLON: All right. You've given  
6 us -- Mr. Westmeyer, you've given us a red-lined copy  
7 of the resolution.

8           MR. WESTMEYER: Yeah, I believe I emailed a copy  
9 to George Bachich yesterday. So he would have a copy  
10 of both initiatives with the -- in the red-lined -- or  
11 if you don't have a colored copy, it would still be  
12 highlighted as strike-throughs and underlines -- it  
13 pretty much identifies the changes we would normally  
14 orally make in situations in the past where the Board  
15 chose to include the text in.

16           But for this situation, I actually prepared an  
17 alternate resolution which will require the text to be  
18 included.

19           If you don't order a report and you don't want to  
20 adopt the initiative as written, then you would have to  
21 order the election. And I would recommend the  
22 alternate resolution be used if you want to include the  
23 text.

24           If you order a report, as I mentioned, we would  
25 like to know if the Board majority is interested in



1 including the text. So when the order of election  
2 comes back in about a month or six weeks or whatever,  
3 we would only have one resolution. It could be put on  
4 the consent calendar and basically approved.

5 All we need is direction on whether you want the  
6 text included or not.

7 MR. TUTEUR: Madam Chair, I just wanted to  
8 clarify. John Tuteur, Registrar of Voters. Supervisor  
9 Dodd mentioned on the ballot and in the official  
10 material.

11 I just want to clarify on the ballot itself, all  
12 that appears is the language -- mostly we know that on  
13 our side, the election side. All that's included on  
14 the ballot itself is the language on page 3 of the  
15 resolution which is limited to 75 words.

16 If the Board asks to print the text of the  
17 ordinance itself, that will be in everyone's sample  
18 ballot booklet for whichever election this is held in.  
19 And that is 66,000, 67,000 sample ballot booklets would  
20 have the text of the ordinance in it, which is the  
21 choice you have, just so you clarify.

22 It's in the voter information pamphlet or the  
23 sample ballot pamphlet that it would be.

24 CHAIRPERSON DILLON: Thank you.

25 SUPERVISOR WAGENKNECHT: Mr. Tuteur, just for --

1 CHAIRPERSON DILLON: I'm sorry, Supervisor  
2 Wagenknecht.

3 Supervisor Luce.

4 SUPERVISOR LUCE: Well, I have a comment apart  
5 from that, so if he has a question.

6 CHAIRPERSON DILLON: Okay.

7 SUPERVISOR WAGENKNECHT: He was walking away. I  
8 wanted to catch him before --

9 CHAIRPERSON DILLON: Sure.

10 SUPERVISOR WAGENKNECHT: Just for information  
11 sake, do you have a possible cost on what that cost?

12 MR. TUTEUR: We haven't printed one since March of  
13 '04 which was Measures O and P at the request of the  
14 Board at that time.

15 But my guess is we're between 1,500 and \$2,500 per  
16 page. That includes typesetting and the extra cost of  
17 adding those pages to the ballot pamphlet.

18 The ballot pamphlet for a countywide election is  
19 normally in the eighty to ninety thousand dollar range,  
20 but depending on how many pages the ordinance takes up.

21 O and P took up a number of pages in the March  
22 2004 sample ballot pamphlet, but I haven't looked at  
23 the initiative ordinances to see how much space they  
24 take up, either Read and Understand or the initiative.  
25 But I would guess somewhere between 1,500 and \$2,500

1 per page.

2 And I can tell you if you decide to move forward  
3 and ask me for an estimate and you do do the 9111  
4 report, I can get you an exact figure before you act if  
5 we do the 9111.

6 CHAIRPERSON DILLON: Just for clarity sake, you  
7 refer to it as a sample ballot. But isn't the sample  
8 ballot something separate from the voter information  
9 pamphlet?

10 MR. TUTEUR: Well, that's correct. The State  
11 calls the statewide one that's come out the voter  
12 information pamphlet. Most counties refer to what they  
13 mail as the sample ballot pamphlet.

14 CHAIRPERSON DILLON: All right.

15 MR. TUTEUR: Because there's a requirement for  
16 local election officials to provide a sample ballot to  
17 everyone. So that's (unintelligible).

18 There is a picture of the ballot that people would  
19 be handed to vote on in the sample ballot. We've asked  
20 people not to cut that one out and send it back because  
21 it's only a sample, but there is a picture in it.

22 But we tend to call that the sample ballot  
23 pamphlet because of the requirement that every voter  
24 receive a sample ballot. But voter information  
25 pamphlet is also correct.

1 CHAIRPERSON DILLON: All right. Supervisor Luce.

2 SUPERVISOR LUCE: Yes. Per Supervisor Dodd's  
3 suggestion, I just want it in the record that I'd  
4 support having the language for two reasons. One is  
5 it's the Read and Understand initiative, it would be  
6 somewhat ironic not to provide the initiative to be  
7 read. So for that one, that one's easy.

8 And I know we're gonna get to the second one as  
9 well. And that one's gonna be one where we're gonna  
10 I'm sure debate the wording in the initiative in terms  
11 of what it actually means, so I think it would be very  
12 important to have that as well. In addition to the  
13 expressed desire of those who receive signatures, I  
14 think it would be important for these particular  
15 initiatives to have that.

16 CHAIRPERSON DILLON: Supervisor Wagenknecht.

17 SUPERVISOR WAGENKNECHT: I have no issue with  
18 either one of those. I think, you know, there is great  
19 interest, potential great interest in both these  
20 issues. And having the wording in there is only gonna  
21 be elucidating for everybody. So I don't think that  
22 will be harmful for anybody.

23 CHAIRPERSON DILLON: Is that a motion?

24 SUPERVISOR WAGENKNECHT: I'll second Mr. Dodd's  
25 motion.

1 CHAIRPERSON DILLON: All right.

2 SUPERVISOR WAGENKNECHT: Because I think he was  
3 making basically that motion.

4 CHAIRPERSON DILLON: Okay.

5 SUPERVISOR DODD: Sounds good.

6 CHAIRPERSON DILLON: We have a motion and -- we're  
7 kind of jumping ahead of ourselves here because we  
8 haven't made one of the decision on the 9118 but --

9 SUPERVISOR DODD: I assume the motion would be  
10 when the resolution is adopted it would include  
11 language requiring the text of the initiative to be  
12 included in the sample ballot or the voter information  
13 packet.

14 CHAIRPERSON DILLON: All right. There is a  
15 motion. All in favor.

16 (Ayes.)

17 CHAIRPERSON DILLON: Opposed? Motion carries.

18 And so now we'll move back to Item 9A.2 and what  
19 action is to be taken pursuant to Elections Code 9118.

20 And I'll take public comment at this time.

21 MR. BACHICH: I'm George Bachich. Are we  
22 addressing only the Read and Understand right now or  
23 can we address both at the same time?

24 CHAIRPERSON DILLON: I think it would be easier to  
25 deal with these separately.

1 MR. BACHICH: All right.

2 CHAIRPERSON DILLON: Because staff is wanting me  
3 to hear the issues concerning each separately if it  
4 gets to the 9111.

5 MR. BACHICH: All right. I don't have anything to  
6 say on Read and Understand.

7 CHAIRPERSON DILLON: All right.

8 MS. SIMMS: Good morning. My name is Ginny Simms.  
9 I live in the City of Napa.

10 I'm here to address the Read and Understand and to  
11 ask that you go toward a 9111 because there are issues  
12 here that I think need to be clear to the public  
13 involved in this.

14 Although it sounds simple, there are some basic  
15 questions, one of which is is it constitutional, since  
16 if you vote one way you have to sign an affidavit and  
17 if you vote the other you do something else. And I  
18 have a hunch that might encourage a lot of double  
19 negative motions.

20 Number two, who does the enforcement, which  
21 department, which individual would do the enforcement  
22 and what would be the penalty?

23 And number three, what would be the cost both in  
24 terms of published material on the part of the Board  
25 and the function of the Board itself? Thank you.

1 CHAIRPERSON DILLON: Thank you very much.

2 MR. POLLOCK: Good morning, members of the Board.  
3 Mark Pollock, Napa.

4 I'm not here to make a comment about the  
5 initiative itself. However, I think the last speaker  
6 raises a very interesting issue regarding enforcement.  
7 The initiative doesn't seem to outline what the remedy  
8 is for members of the public or for government for  
9 violations of the initiative. The initiative is vague.

10 In addition, I've watched you over the years and  
11 I've seen you with the assistance of staff deal with  
12 large piles, volumes of material presented to you in  
13 order for you to take action on any specific item  
14 before you.

15 This initiative would require on its face that  
16 each of you read all of that material notwithstanding  
17 staff assistance and essentially, quote/unquote,  
18 understand what it is that was presented to you, again  
19 without staff assistance.

20 This would have under 9111 apparently an impact on  
21 land use, it would have an impact on infrastructure,  
22 would have an impact on implementation under the  
23 General Plan if for no other reason than it would slow  
24 down methodically the instrument of government.

25 And accordingly, I think it would be appropriate

1 for all of you to have staff or an independent auditor  
2 develop for you under 9111 the impact on those items 1,  
3 2, 3, 4, through 8 under 9111.

4 So that you can be sure, number one, what standard  
5 you're being held to, where the bar is and what the  
6 penalty would be for misunderstanding, if you will,  
7 what it is before you.

8 And secondly, what the impact of slowing  
9 government would be on those people out here that want  
10 to go ahead with projects, with development, with  
11 housing, and so forth.

12 So on that basis, I would urge you to vote for  
13 9111 comprehensive evaluation of this initiative.

14 Thank you.

15 CHAIRPERSON DILLON: Thank you.

16 Changed your mind.

17 MR. BACHICH: Yeah. I'm really surprised that  
18 they even had any reason to order a study on this one  
19 so I would like to comment. First of all --

20 CHAIRPERSON DILLON: Excuse me. Would you  
21 identify yourself, please.

22 MR. BACHICH: I'm George Bachich.

23 We wrote that ordinance. We purposely did not  
24 include a penalty because we didn't want there to be a  
25 penalty. That's not the objective. The purpose of the



1 ordinance is simply to add to the job description of  
2 each Supervisor.

3 And voters can judge for themselves whether  
4 Supervisors are meeting the requirements of the job and  
5 state their opinions on that at election time.

6 It's not a criminal ordinance. It's just a  
7 message from voters that voters expect you to read and  
8 understand laws that you pass that have an impact on  
9 voters.

10 Now, addressing the idea of a study, I question  
11 the purpose of the study. It sounds like the purpose  
12 would be to evaluate the initiative for voters so it  
13 might have a campaign value. But it doesn't have any  
14 value to you in making the decision you have to make  
15 today.

16 By ordering a study you can delay the inevitable  
17 for 30 days. But after that 30 days, you still only  
18 have two choices. You can either enact the ordinance  
19 or you can put it on the ballot.

20 No matter what results the study turns up, it can  
21 have no impact on that decision. So the only impact it  
22 can have, the study, the only impact the study can have  
23 is to either delay the election or to impact the  
24 outcome of the election. And I would submit that those  
25 are vertical purposes and not appropriate uses for

1 public funds.

2 Since it can have no impact on the decision you  
3 have to make, I suggest that you say that whoever wants  
4 such a study, that they perform it on their own time  
5 with their own money and publicize it for the voters to  
6 see.

7 But I think it's an inappropriate expenditure of  
8 public funds and a waste of your time now. And I think  
9 you should not order the study for those reasons.

10 CHAIRPERSON DILLON: Thank you.

11 Any other messages?

12 MS. KUNZE: Carol Kunze, 901 Cape Cod Court,  
13 Berryessa Highlands.

14 When I was living in Brussels, I became chief  
15 legal counsel for an American multinational  
16 corporation. I basically became the only attorney for  
17 a billion dollar operation. My boss was thousands of  
18 miles away and many time zones away.

19 In my first week, she sat me down and gave me some  
20 of the best advice I ever received as an attorney. She  
21 said, "Carol, you don't have to do everything. We  
22 don't have the time."

23 My basic concern about the impact of this  
24 initiative and a question that I would like to see  
25 answered is how much time is reading all these

1 documents going to take.

2 And my primary concern is that it will take so  
3 much time that you're not going to have any time left  
4 over to basically spend with your constituents.

5 The question is also whether decisions are going  
6 to become essentially staff driven because you are  
7 required by our regulation to read all of their  
8 documents, all of the supporting documents, but you are  
9 not required to spend any time listening to us.

10 Part of what goes into a decision is what the  
11 documents say and what your constituents feel about it  
12 and the additional impact that they bring.

13 If this initiative means that you're not going to  
14 be able to have time to listen to the people of the  
15 community, then I think that should make an important  
16 factor in how we go forward with this particular  
17 initiative. Thank you.

18 CHAIRPERSON DILLON: Thank you.

19 MS. SAPER: Cheryl Saper, 4479 Dry Creek Road.

20 I am an attorney licensed by the State of  
21 California. I am a land steward. I have worked very  
22 closely on both of these initiatives. I ran the  
23 signature drive.

24 5,200 people signed the petition to put the Read  
25 and Understand initiative on the ballot. That petition

1 asks that the initiative be put on the next countywide  
2 ballot.

3 Let me quote some recent court cases. The Court  
4 of Appeal of California First Appellate District  
5 Division 3 said: "Under our system, government is by  
6 the people. Through the initiative and referendum  
7 provisions of our constitution and statutes, the People  
8 of California have reserved to themselves the ultimate  
9 legislative power. Neither an elected board nor a  
10 court has the power to limit that reserved right."

11 The Supreme Court of California says: "The right  
12 of initiative is precious to the people and is one  
13 which the courts are zealous to preserve to the fullest  
14 tenable measures of spirit as well as letter. A court  
15 will deny submission of an initiative measure to the  
16 voters only on a compelling showing that proper case  
17 has been established for interfering."

18 So let's talk about the 9111 report. Under  
19 Elections Code Section 9111, the Board's authorized to  
20 order a report studying all kinds of impacts that an  
21 initiative will have, including economic.

22 Section Code 9111 authorizes the Board to order  
23 the report upon circulation of the petition. We began  
24 circulating the petitions in March. This Board has had  
25 five months to order a Section Code 9111 report and has

1 not thought it important enough to order one until  
2 today when it is considering putting it on the ballot  
3 or not.

4 5,200 people signed the petitions saying put the  
5 initiative on the ballot. People were lined up to sign  
6 these petitions. I was out on the street 12 to 14  
7 hours a day and witnessed it myself.

8 Putting -- ordering a report today when you've had  
9 five months to order one is a delay tactic. It could  
10 have been ordered. People want the initiative on the  
11 ballot. And if you wanted a Section 9111 report,  
12 you've had time to order one. Thank you.

13 CHAIRPERSON DILLON: Thank you.

14 MR. POLLOCK: I just couldn't resist coming back.  
15 As a former prosecutor, I can tell you notwithstanding  
16 the best intentions of Mr. Bachich and those people who  
17 drafted this initiative, there's nothing in the  
18 initiative that excludes it from enforcement mechanisms  
19 in place in County ordinances and under the Government  
20 Code.

21 Violation of this ordinance would at a minimum be  
22 a misdemeanor, six months in jail, \$1,000 fine.  
23 Mr. Westmeyer can weigh in on this, but if you violate  
24 any County ordinance, it is a misdemeanor.

25 Whether Mr. Lieberstein would seek to prosecute

1 any of you if you misunderstand something is another  
2 issue. The question is what is the potential sanction,  
3 what is available.

4 Additionally, from a fiscally responsible  
5 perspective, I think it was prudent for this Board to  
6 wait until these initiatives were certified to  
7 determine whether to spend County money on a 9111. I  
8 think waiting till today was appropriate. Thank you.

9 CHAIRPERSON DILLON: Thank you.

10 One last brief comment.

11 MS. SAPER: It will be really short.

12 CHAIRPERSON DILLON: Otherwise we'll have to have  
13 all the people from the audience give up their time.

14 SUPERVISOR: That could be ugly.

15 MS. SAPER: I was thinking somebody might bring  
16 that, saying the initiatives will be certified, so  
17 let's talk about the numbers.

18 We need 3,668 signatures to qualify. So when we  
19 turned in our petitions -- when did we turn them in --  
20 six weeks ago, we turned in 5,200. There was a  
21 question about whether they were gonna be certified or  
22 not.

23 That question could have been answered in a month  
24 at that time. And had you ordered the report at that  
25 time, we would not be kicked over until the June

1 election.

2           And it could not, I submit that it could not  
3 possibly have been the intent of the legislature in  
4 enacting Section Code 9111 to give the Board, any board  
5 anywhere, a power to take over a voter driven  
6 initiative. It could not have that power. They could  
7 not give random arbitrary authority to a board to  
8 disenfranchise the people and what the people want.  
9 Thank you.

10           CHAIRPERSON DILLON: All right. Okay.

11           MR. BACHICH: May I make one more quick comment?

12           CHAIRPERSON DILLON: George, just one, briefly.

13           MR. BACHICH: All the issues, all the questions,  
14 all the objections will be more properly examined  
15 during the campaign. They're election issues.

16           Whether or not voters who vote yes or no is a  
17 question for the campaign. It's not a question for  
18 today. The question for today is whether or not to put  
19 it on the ballot. You can either enact it or put it on  
20 the ballot. Those are your choices. You can make that  
21 choice today. Or if you choose to stall, you can make  
22 the choice in 30 days.

23           But the results of the study can have no impact on  
24 that decision. So it's only a delay tactic if you  
25 employ it.

1 MR. WESTMEYER: Well, let me --

2 CHAIRPERSON DILLON: I think it's been made very  
3 clear that we have three choices today, the 9111, the  
4 adoption of the ordinance or putting it on the ballot  
5 today.

6 MR. WESTMEYER: Well, there's one other variable  
7 in the resolution that I guess I need to mention for  
8 those who haven't read it.

9 A few years ago, probably in the late 1980s again  
10 the legislature added to the Elections Code a provision  
11 that gives the Board of Supervisors, City Council as  
12 the case may be, the right to ask for a fiscal analysis  
13 by the auditor limited to 500 words similar to my  
14 impartial analysis which is also limited to 500 words.

15 This resolution requires that fiscal analysis to  
16 be prepared. However, it would have to be prepared in  
17 about five days because the printing schedule dictates  
18 when the arguments for or against are to be submitted.  
19 And we typically include the impartial analysis and a  
20 fiscal analysis if the Board should choose to prepare  
21 one prior to the deadline for the argument for or  
22 against, so people writing those arguments will know  
23 what the impartial analysis says and the fiscal  
24 analysis.

25 The 9111 report also, number one out of the chute



1 is the Board can ask for a fiscal impact analysis,  
2 which is to some extent duplicative I suppose of the  
3 500 words, but you have more time to do what presumably  
4 would be a more thoughtful fiscal analysis. A fiscal  
5 analysis done in five days is presumably not gonna be  
6 as substantive as one where you have 30 days to prepare  
7 it.

8 But I just felt I needed to mention that because,  
9 unless the Board changes the resolution whenever it  
10 adopts the resolution, it's gonna require the auditor  
11 to prepare a fiscal analysis of 500 words. That  
12 material goes in the official ballot materials along  
13 with the text of the ordinance since the Board's voted  
14 on that and my impartial analysis.

15 The 9111 report is not official material and will  
16 not appear in of course the sample ballot or the voter  
17 information packet.

18 CHAIRPERSON DILLON: Thank you for that  
19 clarification.

20 Is there any other member of the public wishing to  
21 address this? Oh, I'm sorry, Sandy.

22 MS. ELLIS: Thank you, Madam Chair. Sandy Ellis,  
23 130 Sagewood, speaking as an individual.

24 I find it ironic that the proponents of this  
25 initiative are saying do not study this when the whole

1 basis is read and understand. The basis of an informed  
2 electorate and a wise democracy is information. It  
3 cannot possibly hurt to have information and to  
4 understand in detail what this initiative means.

5 Clearly everyone wants you all to read and  
6 understand what you legislate on. There is no issue  
7 with that. But exactly what this particular initiative  
8 and ordinance would mean in detail is an appropriate  
9 step to take.

10 Clearly the initiative process has been used, and  
11 is designed to be used for voters and concerned  
12 citizens to come forward with some ideas. There's no  
13 issue with that. It's part of our democracy.

14 But the process is very clear and the proponents  
15 are very much aware of it. Ms. Saper has been involved  
16 and has seen 9111 reports ordered on other initiatives  
17 that she's been involved in.

18 Anyone can count the process 30 days for  
19 clarification, another 30 days for 9111. There are no  
20 secrets here. To cry wolf about delaying tactics and  
21 politics is somewhat hypocritical. The whole  
22 initiative Read and Understand is a political ploy to  
23 start with.

24 So let's not cast aspersions on (unintelligible)  
25 electorate and a need to read and understand what the

1 initiative means. Thank you.

2 CHAIRPERSON DILLON: Any other new member of the  
3 public wishing to speak?

4 All right. Supervisor Wagenknecht.

5 SUPERVISOR WAGENKNECHT: Well, I think it is  
6 appropriate that we ask for a 9111 report on this. I  
7 think, you know, first off, it's consistent.

8 You know, I would never, I would never -- we've  
9 never ordered report prior to signatures being  
10 certified. We've never done that and, you know, have  
11 no reason to do that this time. This is just part of  
12 the process. You figure that into your -- figure that  
13 into your math as you're getting the signatures figured  
14 out.

15 I think that this is, you know, obviously there's  
16 gonna be different viewpoints on this. The best we can  
17 do as the County is try and get as much information  
18 before the campaign starts, you know, hyperbolizing the  
19 information and making it one way or the other. You  
20 know, this will give some information.

21 So I like the idea of doing it. I was looking at  
22 the eight areas, you know, on it. You know, fiscal  
23 impact, obviously. I'm not sure about the effect on  
24 the internal consistency and General Plan. I don't see  
25 what that necessarily has a lot to do with on this one.

1           Maybe Number 4, the impact of planning  
2 infrastructure of all types, impact of the ability  
3 business, I don't know, you know, just kind of -- I'm  
4 just looking at it.

5           SUPERVISOR:   Retaining supervisors.

6           SUPERVISOR WAGENKNECHT:   What's that?   Yeah, I  
7 know.

8           I think the answer to the question of enforcement  
9 is gonna be, is gonna be one of the questions that  
10 people have.   So I think that that should be addressed.

11           The constitutionality, I've heard it talked about  
12 that this would never stand a constitutional test.   I  
13 don't know if that's the case or not.   And I don't know  
14 if this is the right place to find that out.   It's the  
15 only place I have to ask, they may not really tell me  
16 necessarily.

17           I'm trying to see if there's anything else in  
18 here.   Those are the things I'd be interested in at  
19 this point.

20           CHAIRPERSON DILLON:   All right.   Thank you.

21           Supervisor Moskowite.

22           SUPERVISOR MOSKOWITE:   Yes.   You know, this has  
23 been going on for a long time, before they even started  
24 collecting the signatures for the ballot, talking about  
25 the resolution.

1           And they started in March, and nothing has been  
2 done until now. And you know, what they want us to do  
3 is read all the material, and that's what we get paid  
4 for. And this would just be a delay in trying to get  
5 it put over to the June election.

6           And I think we should forget about the 9111 report  
7 and go ahead and vote to put this on the ballot.

8           CHAIRPERSON DILLON: All right. Thank you.

9           Supervisor Dodd.

10          SUPERVISOR DODD: Yeah, I certainly can see how  
11 some people would think that, but I totally disagree.  
12 I think this is a past practice that this Board has  
13 done.

14          I've been on the other side of issues where this  
15 has been done, and I've had the same, you know, the  
16 same feelings in the past. That's one of the reasons  
17 why I voted to add the text to the issue because  
18 there's a past practice of doing it.

19          So I think when you deviate from past practice,  
20 then you can be accused of doing something for  
21 political purposes. And I think that we need to move  
22 forward and order this and move on.

23          CHAIRPERSON DILLON: All right.

24          Supervisor Luce.

25          SUPERVISOR LUCE: I'm gonna line up with Harold on

1 this one. I don't -- I think you have to weigh the  
2 value of a 9111 and what that would actually add to our  
3 understanding of this initiative against I think the  
4 rights of the initiative collectors to see this on the  
5 first ballot possible.

6 And I tend to on this one believe that there won't  
7 be a lot of benefit from a 9111 report. And so  
8 therefore I'm leaning the other way.

9 I think this sort of is an example of how  
10 difficult it is to require someone to read and  
11 understand an initiative. We've got such a debate  
12 across here between totally delaying government  
13 completely because of potential misdemeanor enforcement  
14 versus, no, it's just a job description, don't worry  
15 about it, that to expect somebody to sign off if they  
16 understand something before they act upon it I think  
17 is very unreasonable.

18 So I suppose that's a statement, but at the same  
19 time I believe that it should go on the next possible  
20 ballot.

21 SUPERVISOR WAGENKNECHT: Go ahead.

22 CHAIRPERSON DILLON: No, go ahead.

23 SUPERVISOR WAGENKNECHT: I was gonna just make a  
24 motion.

25 CHAIRPERSON DILLON: Oh, okay. Well, I wanted to

1 comment.

2 I think that, I think -- I thought we needed a  
3 9111 before I walked in here today after studying this,  
4 after reading and studying it.

5 And what I've heard today about misdemeanors, I  
6 think we need to know if there is a potential for that.

7 And I'll bring up an example from last week where we  
8 have a policy on this Board, a fairly long standing  
9 policy that any action we take regarding legislation or  
10 opposition to, for or against anything happening that's  
11 outside the County realm requires a unanimous decision.

12 And I'm thinking specifically of some rather  
13 onerous regulations that the State Water Resources, the  
14 State Water Board is trying to promulgate and get Napa  
15 County to be subject to. And so I had proposed that we  
16 write a letter opposing the onerous regulations. And  
17 last week -- that would require all five of us, yes, to  
18 take that action.

19 And last week when it came up, there was at least  
20 one member of this Board who hadn't read it, who hadn't  
21 read the proposal, although that person was ready to  
22 vote yes in favor of being opposed to these  
23 regulations.

24 I think there are serious ramifications here to  
25 this act in terms of things like that. And I think we

1 all need to understand that. And I think having a 9111  
2 and knowing that you couldn't just say, oh, yeah, I  
3 read it or no, I didn't, and there's a misdemeanor  
4 count to it, is something significant to which we need  
5 the answer.

6 I also think there's a fiscal impact in terms of  
7 cost of preparing the paperwork, obtaining all  
8 signatures, storing, you know, what we do with those  
9 pieces of paper and how we store them.

10 In business, we commonly say letter costs -- well,  
11 we used to say eight dollars, I have no idea what the  
12 figure is anymore. But there's an inherent cost in  
13 handling paperwork. And this will create more  
14 paperwork. So we need to know what that's going to  
15 cost.

16 I'd like to also know the extent to which the  
17 findings are inaccurate and any of the text is  
18 inaccurate. The text refers to us approving  
19 regulations, for instance. And it's my understanding  
20 we don't pass regulations.

21 I have a question about whether a new ordinance  
22 means that updates to a current ordinance are exempt,  
23 just, you know, changing a word or making a minor text  
24 change, or is every change that we adopt a new  
25 ordinance.



1 In Finding Number 4, it talks about, it references  
2 documents adopted by resolution. And I think we need  
3 to know through the 9111 if the provisions of an  
4 initiative concerning ordinances and regulations  
5 require reading and understanding all of the underlying  
6 documents, for instances requests for proposals,  
7 contracts.

8 Every week on our consent calendar, we'll have as  
9 many as -- well, we have had as many as 50 things on  
10 the consent calendar which are health and human  
11 services contracts. We don't see all those contracts.  
12 What we see is an agenda item that summarizes the  
13 contract for us, that tells us why we're doing it.  
14 Most of the time it's a mandate from the State that we  
15 have to do it.

16 I want to know if this act is gonna make us all  
17 have to read all of that. It become a time issue. It  
18 will become a paper issue. Because right now all of  
19 those documents which could be six inches high for each  
20 of those items, they're not copied and submitted to  
21 each of us, because that's not the way that boards of  
22 supervisors and city councils and other agencies work  
23 in the State of California.

24 And I also have a question about the wording,  
25 "Shall certify in writing at the time and prior to its

1 going into effect," if that language requires two  
2 signatures, because those are two separate points in  
3 time. And if two signatures are not requires, why are  
4 both of those points in time mentioned in the  
5 ordinance.

6 And I also have a concern about voting no doesn't  
7 require you to certify that you read anything or  
8 understood anything, and only voting yes requires a  
9 written certification.

10 So those are the issues that I would like explored  
11 in the 9111, and I think they're significant.

12 So, Supervisor Wagenknecht.

13 SUPERVISOR WAGENKNECHT: At this point I would  
14 move that we give the testimony that we've had here for  
15 the direction of a 9111 and request that a 9111 be done  
16 on the Read and Understand initiative.

17 SUPERVISOR DODD: Second.

18 CHAIRPERSON DILLON: We have a motion and a  
19 second. All in favor.

20 (Ayes.)

21 CHAIRPERSON DILLON: Opposed?

22 (Nos.)

23 CHAIRPERSON DILLON: Motion carries.

24 All right. We will now move --

25 MR. WESTMEYER: I have just one final question on

1 that one. So when we come back after the report's  
2 prepared, we'll have a resolution that everybody  
3 understands, is acceptable to the Board, would the  
4 fiscal -- we're gonna include the text which is the one  
5 option, the text of the initiative.

6 And the other option is whether in addition to the  
7 911 report you would want the auditor to prepare a 500-  
8 word fiscal analysis which would go in the official  
9 materials. The resolution currently says we'll do  
10 that, although typically the answer's been no.

11 Are you interested in having those 500 words  
12 included in the official ballot material or not? I  
13 just need to know that so when I bring back the  
14 resolution or in the election for June of '06, it will  
15 be definitive one way or the other.

16 CHAIRPERSON DILLON: Has it been our custom to do  
17 that?

18 MR. WESTMEYER: No.

19 CHAIRPERSON DILLON: Okay. Is there any reason  
20 that the two would be different, the 500 words -- I  
21 mean other than actual text, but is there --

22 MR. WESTMEYER: The difference is the 500 words  
23 would be in the ballot pamphlet that John sends out to  
24 every voter. If you don't require to do that, there  
25 will be fiscal analysis included in the official ballot

1 materials.

2 And I see the auditor coming up to give her two  
3 cents.

4 MS. KINDIG: If you in fact --

5 CHAIRPERSON DILLON: Good morning.

6 MS. KINDIG: Pam Kindig, Auditor-Controller.

7 If you in fact decide to include this, I would be  
8 obviously using much of the information that will be  
9 obtained in the 9111 report to prepare that 500-word  
10 analysis.

11 CHAIRPERSON DILLON: Well, I would think you'd  
12 want to include it then.

13 SUPERVISOR LUCE: I think so.

14 CHAIRPERSON DILLON: All right. We've got a  
15 motion. And a second if we need one --

16 SUPERVISOR LUCE: Second it, yeah.

17 CHAIRPERSON DILLON: -- to include the auditor's  
18 fiscal analysis.

19 MR. WESTMEYER: Well, so everyone understands,  
20 when the resolution comes back, it will require the  
21 text of the initiative to be included in the official  
22 ballot materials and the fiscal analysis of the  
23 auditor, which would be limited to 500 words also.

24 SUPERVISOR DODD: Just so I'm clear, Madam Chair,  
25 if the past practice is that we haven't done it in the

1 past, then I can't support, I just can't support it. I  
2 think it's inconsistent with my last statement.

3 SUPERVISOR: Support being inconsistent.

4 CHAIRPERSON DILLON: You can be more flexible,  
5 Bill.

6 All right. Well we have a motion and a second I  
7 guess on the subissue of including the auditor's fiscal  
8 analysis. Any other comment on this?

9 All in favor?

10 (Ayes.)

11 CHAIRPERSON DILLON: Opposed?

12 SUPERVISOR DODD: No.

13 MR. WESTMEYER: The last issue on this is unless  
14 you're gonna require the 9111 to be done in 13 days, we  
15 would need to know what date would be acceptable to at  
16 least three members of the Board to have a short  
17 meeting to accept the reports during the week of  
18 September 6th.

19 If you order today which is the 9th, I believe  
20 September 8th would be the 30th day. And you don't  
21 meet the 6th of September or the 30th of August, so it  
22 would require a special meeting.

23 All you'd need is three Boardmembers here, because  
24 all you would have to do is open the meeting, accept  
25 the report, and that would be the end of the meeting.

1 It would probably be five or ten minutes, if you want  
2 to do it quickly.

3 Do you have any idea on what the Boardmembers'  
4 schedules are so we would know when to have the Chair  
5 call a special meeting, assuming you're willing to do a  
6 special meeting. Otherwise, the report would be due  
7 the 23rd of August.

8 CHAIRPERSON DILLON: Supervisor Wagenknecht.

9 SUPERVISOR WAGENKNECHT: I'd be happy to do it on  
10 the 6th. I'm in town.

11 CHAIRPERSON DILLON: I could do the same.

12 SUPERVISOR MOSKOWITE: I'm not in town.

13 SUPERVISOR DODD: I could be here.

14 CHAIRPERSON DILLON: Supervisor Dodd could be  
15 here.

16 MR. WESTMEYER: We'll have the Chair call a  
17 special meeting for the 6th for the sole purpose of  
18 accepting the report, in case anyone in the audience  
19 wishes to attend. I would imagine it's gonna be a  
20 five-minute meeting.

21 CHAIRPERSON DILLON: All right. Famous last  
22 words. All right. Thank you.

23 Now we will move to Item 9B. And it's a similar  
24 discussion in terms of structure but regarding a  
25 different initiative, Fair Payment for Public Benefit

1 Act.

2 And I guess the first item would be regarding  
3 receiving certification of the signatures.

4 SUPERVISOR DODD: So moved.

5 SUPERVISOR WAGENKNECHT: I'll second it.

6 CHAIRPERSON DILLON: We have a motion and a second  
7 to receive certification of the signatures. All in  
8 favor.

9 (Ayes.)

10 CHAIRPERSON DILLON: Opposed? Motion carries.

11 And do we want to address including the text?

12 SUPERVISOR WAGENKNECHT: I would second --

13 SUPERVISOR DODD: I'll make that motion.

14 SUPERVISOR WAGENKNECHT: -- Supervisor Dodd's  
15 motion.

16 CHAIRPERSON DILLON: All right. Just to make  
17 clear that that's what the --

18 SUPERVISOR DODD: Yeah, the text.

19 CHAIRPERSON DILLON: -- to include as well.

20 Motion and a second to include the text whenever  
21 we get to putting this on the ballot. Any discussion?

22 All in favor.

23 (Ayes.)

24 CHAIRPERSON DILLON: Opposed? Motion carries.

25 And now we move --

1 MR. WESTMEYER: You've got the fiscal analysis, if  
2 we're going through the preliminaries, on the Auditor  
3 again, if you want to take that up now, decide whether  
4 that would be, whether it would be consistent with what  
5 you've just decided on the Read and Understand  
6 initiative.

7 CHAIRPERSON DILLON: Well, I think I'd rather hear  
8 comments.

9 MR. WESTMEYER: You want to wait and do that  
10 later.

11 CHAIRPERSON DILLON: Do things in the same order  
12 that we did them last time.

13 So this is the time for deciding what action we're  
14 going to take as required by Elections Code Section  
15 9118. And I would ask if there are any members of the  
16 public wishing to comment.

17 MR. CHAPPELET: Good morning, Chairwoman Dillon,  
18 Supervisors. John Marc Chappelet, 811 Jefferson,  
19 speaking as the Napa County Farm Bureau President.

20 There's no doubt that this is a -- we actually,  
21 before I get started, we submitted in written form -- I  
22 didn't see it out so I wanted to make sure you got it.  
23 My comments today will largely reflect what we  
24 submitted in written form but not exactly the same.

25 There's no doubt that this is a very controversial



1 issue. The proponents of the initiative would have you  
2 believe that the impact would be negligible.

3 Our analysis of it shows it to be potentially  
4 catastrophic for the County. A thorough 9111 report  
5 would help illuminate the truth here.

6 Maybe we're being too skeptical of their  
7 intentions and too pessimistic regarding the fallout if  
8 this initiative were enacted. What we should all agree  
9 on though is that the citizens of this County deserve  
10 the same impartial analysis of any legislation of this  
11 magnitude. Ordering a 9111 report is a logical and  
12 responsible decision for this Board to make at this  
13 time.

14 The Farm Bureau urges examination of the  
15 initiative on several areas, its impact to agriculture  
16 and agricultural protections, its fiscal impact to  
17 County government and taxpayers, its effect on the  
18 internal consistency with the County's General Plan and  
19 its impact on the General Plan update, its impact to  
20 businesses and the permitting process, and the  
21 initiative's constitutionality and the potential to  
22 create planning and permitted chaos and ongoing  
23 litigation.

24 Under the guise of a fairness argument, this  
25 initiative sets in place a deadly attack on 40 years of

1 community efforts to protect agriculture in Napa along  
2 with the health, safety and welfare of our community.

3 Voters need to understand the potential to  
4 undermine the ability of County government to function.  
5 Understanding the legality of this initiative is  
6 essential in order to understand the potential legal  
7 risk to the County in defending it if it were to pass.

8 Our preliminary research indicates that this  
9 initiative is preempted by the California Constitution,  
10 contravenes a wide body of case law and does put the  
11 County at serious legal risk.

12 The Farm Bureau also supports the preparation of  
13 an impartial fiscal analysis as authorized by Elections  
14 Code Section 9160.

15 Facing a similar initiative in 2002, Nevada County  
16 ordered both a 9111 and 9160 report which indicated  
17 three to ten million dollars of cost to the County  
18 government and the dire prediction of a loss of revenue  
19 to essential County services.

20 It's important to look at the measure's monetary  
21 effect on the County in terms of political claims as  
22 well as administrative and legal costs. The truth is  
23 that we have no idea how big the fiscal impact would be  
24 on this County. But given land values here -- given  
25 the land values here, this is likely that the impacts

1 on this County would be far greater than those  
2 predicted for Nevada County.

3 Given the constraints on staff time, complexity of  
4 issues and the 30-day time period to prepare the  
5 report, we suggest the use of an outside consultant for  
6 these tasks.

7 In conclusion, we urge the Board of Supervisors to  
8 help educate voters on land served issue and to approve  
9 funding of approximately \$30,000 for the preparation of  
10 Elections Code 9111 and 9160 reports. Thanks.

11 MR. SLUTZKIN: Charles Slutzkin, 4999 Devlin Road.  
12 I'm here to request that the Board follow precedent for  
13 placing measures on the Napa Valley by requiring that a  
14 9111 report be prepared for the land stewards fair pay  
15 initiative.

16 This measure if passed would I believe have huge  
17 impacts, both anticipated and unanticipated, on the  
18 future of Napa County. We should therefore make every  
19 effort to have an informed vote through a process that  
20 will build both knowledge and trust in the voting  
21 process.

22 I therefore recommend that an independent  
23 consultant prepare the report. As a businessman and  
24 land developer, I would like to see the report discuss  
25 fiscal impacts as well as the impacts on the County's

1 housing commitments, on development and on the County's  
2 ability to attract businesses.

3 If there are any questions, please ask.

4 Otherwise, that concludes my comments.

5 CHAIRPERSON DILLON: Thank you.

6 MR. WILLIAMS: Good morning. Craig Williams, Napa  
7 Valley Vintners.

8 I would like to read a letter that was written to  
9 all of you from our president Joe (unintelligible).  
10 This letter was written to ask that you fully  
11 comprehend the significant impact of this initiative  
12 that a 9111 report commission -- or report be  
13 commissioned. So I'll read this as a matter of record.

14 "On behalf of the Napa Valley Vintners, we  
15 respectfully request that the Board commission a 9111  
16 report by an independent consultant to evaluate the  
17 effects of Measure C on the County of Napa.

18 "It's important for all of us to know how this  
19 measure will affect land use in Napa County, the fiscal  
20 implications for the County, and therefore the  
21 taxpayers, and the community's ability to maintain and  
22 attract businesses.

23 "We believe that the information provided in such  
24 a report will allow us to educate our membership to  
25 form independent decisions on Measure C as well as

1 allow a possible collective position from the Napa  
2 Valley Vintners. Thank you very much for your  
3 consideration."

4 CHAIRPERSON DILLON: Thank you.

5 MR. HARDY: Madam Chair, members of the Board, my  
6 name is Lester Hardy, 1407 Main Street, Suite 203 in  
7 Saint Helena.

8 I'm gonna say at the outset something that may be  
9 obvious to everyone but I think it's well worth saying.  
10 I believe this is possibly the most important  
11 legislative proposal before this Board certainly that's  
12 occurred in my lifetime and the lifetime of anyone else  
13 in this room.

14 By proposing that the County should be required to  
15 compensate landowners for legislation or other actions  
16 that reduce the value of the property, from a  
17 philosophical perspective, this initiative is nothing  
18 less than an assault on the very premise of zoning.

19 I think it should be in any event obvious to all  
20 that there would be little or no zoning today if from  
21 the beginning this kind of compensation had been  
22 required.

23 As a philosophical or a political matter, I think  
24 the proposal reflects a conflict or tension that's been  
25 inherent in American politics and related jurisprudence

1 from the beginning of the country. It's the classic  
2 conflict between a philosophical perspective that  
3 places the primary importance on benefits to the  
4 community as a whole versus the philosophical  
5 perspective that places the primary importance on  
6 individual rights, the rather archaic language of  
7 political science.

8       It's kind of ironic today because these  
9 philosophies are identified on the one hand as  
10 Republican -- and that's the view that emphasizes the  
11 community over the individual, Republican, you know,  
12 harkening back to Roman times really in political  
13 theory, the notion that the primary duty of the citizen  
14 is to make a contribution to the greater good -- versus  
15 the opposing camp which political scientists label  
16 liberal because it arises out of the 18th century  
17 theories of liberal individuals and importance of the  
18 individual.

19       This debate is ongoing in our country and in every  
20 community. It's I think in the big picture one of the  
21 most important debates that we have. This proposed  
22 legislation reflects that debate and a lot of history  
23 behind it.

24       And again I mention all of this because I think it  
25 is truthfully the most important thing that I've seen

1 come up before the Board of Supervisors as long as I've  
2 lived in Napa County.

3 And I say that because I think it's very important  
4 that everyone involved including this Board act on an  
5 informed basis.

6 Going to particulars, although I haven't studied  
7 the cases for some months, I know that over the last  
8 several years the whole subject of the exemption from  
9 the California Environmental Quality Act for  
10 initiatives has been under judicial attack, and in fact  
11 the law has changed.

12 And it is not clear to me at this moment whether  
13 you could in fact adopt this initiative into law  
14 without making an environmental determination pursuant  
15 CEQA. And I would respectfully suggest that perhaps  
16 one of the more important subjects that should be  
17 analyzed, should you choose to request a 9111 report,  
18 is how CEQA applies under current law to your option  
19 whether or not you can adopt this yourself.

20 So far as I know, at the present time initiatives  
21 qualified by citizens for the ballot are still exempt  
22 from CEQA, but I'm fairly certain that if you as the  
23 Board were to choose to put an initiative measure on  
24 the ballot it would require a CEQA determination.

25 So this is evolving perhaps in some aspects of

1 certain areas of law and one that has tremendous  
2 relevance to the decision in front of you today.

3 Finally I'd just like to reemphasize that the  
4 proposal, the initiative, proposed legislation that's  
5 before you really does portend the end to zoning as we  
6 know it. Not that it challenges our existing zoning  
7 scheme, it does not.

8 But from this point forward, if adopted, the whole  
9 process of contemplating new or different zoning  
10 regulations would be fundamentally altered and in ways  
11 I think that have potentially profound consequences.

12 For me, the easiest way to think about this is to  
13 note that if this rule had been in effect four years  
14 ago, we certainly would not have an ag preserve today.

15 So again I think the more information you have  
16 before you make the next decisions that are required by  
17 law, the better. Thank you.

18 CHAIRPERSON DILLON: Thank you.

19 MR. TADAY: Good morning. Ron Taday, 7391 Saint  
20 Helena Highland. I have a letter to read to you.

21 "Dear members of the Board of Supervisors. I'm  
22 writing to ask that you hire an independent consultant  
23 to analyze the potential consequences of the Fairness  
24 to Taxpayers initiative.

25 "In the course of discussions about this



1 initiative, many claims have been made by the  
2 proponents, and these claims have a serious emotional  
3 ring to them even if the content of the corresponding  
4 language of the proposed initiative is vague or  
5 possibly nonexistent.

6 "We have also heard much talk about, quote,  
7 unintended consequences, end quote, of any regulatory  
8 ordinances from the proponents. But when it comes to  
9 unintended consequences, this initiative will win any  
10 hands-down contest.

11 "What exactly will this initiative mean to  
12 landowners, County government and the citizenry of the  
13 County in general? Who will benefit, who will suffer?

14 "What will be the consequences of such radical  
15 legislation to the agricultural economy of the County?  
16 I doubt if anyone can tell at this stage.

17 "I think the only responsible step that the Board  
18 could take would be independent analysis of this very  
19 serious and very complex offering, so that every member  
20 of the electorate will know precisely what he or she  
21 will be voting on when this initiative reaches the  
22 ballot. Anything less would be divisive to the  
23 citizens. Sincerely Walter Hampy."

24 Mr. Hampy is out of town and could not be here to  
25 present this. So I'm doing that on his behalf.

1 I also echo his concerns. As a farmer, I rely, as  
2 many others do, on the Board of Supervisors to enact  
3 reasonable land use and natural resource protection  
4 ordinances from time to time, including the  
5 implementation of the upcoming General Plan update.

6 And I think that the ability of this Board  
7 government as Supervisor Dodd indicated, as we have  
8 done in the past, you know, in relying on what to adopt  
9 in terms of the resolutions would be hampered.

10 And I know that the staff is diligent in its  
11 efforts to try and (unintelligible) the Board. But in  
12 the case of the 9111 report, I think the staff has  
13 already been extended, as I've heard over several  
14 months, on other ongoing projects including the General  
15 Plan update, which is of critical importance to the  
16 County as a whole.

17 So I would urge also that the independent  
18 consultant be hired to conduct the 9111 report. Thank  
19 you.

20 MS. CAALER: Good morning. I'm Nan Caaler, 1570  
21 Oak Street, Napa. I have a short statement.

22 The proposal to force the County to  
23 (unintelligible) to limit or restrict land use is very  
24 worrisome to me. As I understand, today you will  
25 decide to do a fully study on the impacts of these

1 initiatives. I urge you to do this routine study and  
2 to hire a consultant so that it be done by a third  
3 party to encourage public trust.

4 You can understand that I'm concerned about the  
5 (unintelligible) these lawsuits on the library budget.  
6 Libraries are not guaranteed their funding from year to  
7 year and we worked hard to get extended hours and to  
8 open the American Canyon branch. I fear these are in  
9 danger.

10 Thank you for your continued support for good  
11 library service in Napa County. And take a careful  
12 look at the potential losses (unintelligible).

13 CHAIRPERSON DILLON: Thank you.

14 MS. KUNZE: Carol Kunze, 901 Cape Cod Court. I'm  
15 speaking on behalf of the Napa Sierra Club.

16 We strongly urge that a 9111 report be produced to  
17 present the clearest picture possible of the impact of  
18 this initiative.

19 The wise exercise of land use authority by County  
20 Supervisors has protected this region and preserved our  
21 rural character when all around us will succumb to  
22 development pressure. The Napa Sierra Club is very  
23 concerned that the impact of the initiative will be to  
24 end the exercise of land use authority as we know it,  
25 removing from Supervisors the most effective tool we

1 have to protect our way of live.

2 There are numerous questions that a 9111 report  
3 could answer we indicated to you that our more  
4 immediately relevant to ongoing projects.

5 The first one is what would be the impact on the  
6 update of the General Plan. We understand that Nevada  
7 County, which as you know faced a similar measure,  
8 determined that some 189 elements of their General Plan  
9 would be affected and the County would have had to stop  
10 the General Plan update to avoid the risk of paying  
11 compensation.

12 In effect, it would have closed the General Plan  
13 which would then become outdated with time. We in fact  
14 are in a worse position than Nevada County because our  
15 General Plan is already out of date.

16 The second question is what will be the impact of  
17 a program EIR. The program EIR that has been developed  
18 for Napa County will assess the current state of our  
19 environmental health and tell us basically how much  
20 more development our resources can stand. What will be  
21 the result if a program EIR identifies threats to the  
22 environment but we cannot afford to address them.

23 The third question, how will the initiative impact  
24 our ability to respond to TMDL 2. We recently received  
25 the next report in the TMDL process. Regulations for

1 regulatory action have not yet been made but  
2 suggestions of expanding current regulations have.

3       Once the process is complete, are we going to have  
4 to simply stand aside and wait for State mandated  
5 nondiscretionary regulation to be passed, are we going  
6 to have to have an opportunity to have a say in what  
7 those regulations are.

8       And fourth, will the initiative impact our ability  
9 to close loopholes in current regulations. The land  
10 stewards have already acknowledged that the initiative  
11 would be triggered by small changes that close  
12 loopholes in the regulations that we already have.

13       A 9111 report should analyze this potentiality and  
14 confirm its impact on the County's ability to deal with  
15 loopholes that we find. Thank you.

16       MR. EDMINSTER: Al Edminster. I live in Napa.

17       I'm here to convey a communication from Eve Kahn.

18       The communication reads:

19       "Business conflict regretfully prevents me from  
20 attending this hearing in person. On behalf of  
21 (unintelligible) I wish to request a full and impartial  
22 analysis of this initiative 9111 report.

23       "In addition, we request that outside legal and/or  
24 third party consultants complete this report to prevent  
25 any conflict of interest of County staff.

1           “(Unintelligible) has not taken a formal position  
2 on this initiative. As yet, many questions remain. We  
3 anticipate the 9111 report will at a minimum address  
4 these.

5           “One, will adjustments to existing ordinances  
6 trigger the restrictions in this ordinance?

7           “Two, what constitutes any action by Napa County  
8 Board of Supervisors? Does an action take place to  
9 place a land use ordinance on the ballot trigger this  
10 initiative?

11           “How far reaching is any action? Would it apply  
12 only to the members sitting as the Board of Supervisors  
13 as a whole or could it be also interpreted to mean a  
14 single Boardmember’s actions on another board, NCTPA,  
15 sanitation, et cetera? What about the Boardmembers who  
16 sit on the Floor Control District?

17           “Is this ordinance limited to voting and passage  
18 of ordinances, zoning changes, et cetera, or could it  
19 also apply for example to a Supervisor attending a  
20 County sponsored meeting in Sacramento or Washington  
21 that results in a new State or Federal law land use  
22 regulation?

23           “We are aware that the State and Federal laws are  
24 exempt. But could the Supervisors’ attendance be  
25 considered an action which would then fall under this

1 initiative.

2 "There's nothing in the ordinance that define the  
3 limits exactly who can file a claim to the County but  
4 is the impact of widespread planning. For example,  
5 suppose a new groundwater ordinance was passed that  
6 would limit new vineyards or prevent replants on  
7 certain specified parcels. All the newspaper articles  
8 and letters to the editor are focused on the reduction  
9 in income or land value to those specific parcels  
10 affected.

11 "And even the supporters of this initiative admit  
12 that the neighbors who are not directly impact -- not  
13 directly impacted by this new ordinance can file a  
14 claim that their property is now devalued as well. The  
15 neighbors could file a claim for example because they  
16 won't have promised views, even though views are not  
17 protected views.

18 "What happens if owners of a certain specified  
19 parcel decide to use their land for another allowable  
20 purpose and have the neighbors file a claim of  
21 devaluation because of newly created traffic or noise.  
22 The result is the County could have hundreds and  
23 hundreds of claims from surrounding property owners.

24 "Exemption Number 3 does not include any safety  
25 regulations. An ordinance to improve access by fire

1 safety vehicles be subject to this ordinance? Would  
2 the widening of County and private roads considered  
3 inherent in fire codes? Would such widening for safety  
4 purposes only trigger claims with a vote to improve  
5 NCTPA plans including turn lanes on County roads  
6 trigger this ordinance?

7 "Are special elections required to deal with  
8 Exception 5 (unintelligible)?

9 "I encourage your support and vote to complete the  
10 9111 report for this initiative. I also would prefer  
11 an outside contractor because of published needs and  
12 feel that this is impartial.

13 "It is critical for everyone to better understand  
14 the impact it will have on the County and our future.  
15 Signed, Eve Kahn."

16 Personally, does this have a sunset? The  
17 implications could go on forever, modified by another  
18 vote of the people?

19 The implications are huge here. We really should  
20 know all of them and they should be made public. Thank  
21 you.

22 MR. POLLOCK: Back again. Mark Pollock, Napa.

23 I am here now as a homeowner, a grape grower and a  
24 lawyer. As a lawyer, I should be in favor of this  
25 initiative, because due to the vagueness in it, it's



1 going to make me a very wealthy man if it passes.

2 The question then becomes what will it cost the  
3 County fiscally to deal with the litigation on that  
4 side of it, which will certainly result in the  
5 implementation ordinance in the initiative. What will  
6 it cost the County in time?

7 And I don't stand here today to critique the  
8 initiative. I'm addressing the need for 9111 analysis,  
9 comprehensive analysis through a certified independent  
10 consultant separate from County staff. I think the  
11 voters would ask for nothing less.

12 If the court looks at the initiative and deals  
13 with it as an unconstitutional breach, at that point  
14 the County would be in a position where it would have  
15 to deal with those additional costs. That has to be  
16 evaluated, all the costs of such litigation.

17 But there is the additional cost of delay. I  
18 stand before you representing clients, not  
19 environmental groups but developers, developers who  
20 have projects in the works or projects proposed to be  
21 built and developed within this County because we've  
22 got good infrastructure, we have good schools, we have  
23 good public safety, we have incredible land values in  
24 reference to adjacent counties.

25 The question those people are asking me as fiscal

1 conservatives is what impact will this initiative have  
2 on the ability of the Board to do a number of things,  
3 number one, to act on my project.

4 If the initiative passes, will Board action  
5 essentially freeze for a period of two to three years  
6 while this thing is fought out in the court? Will  
7 decent projects linger and languish while this thing is  
8 fought out and meshed out in the courts, what delay?  
9 And I don't know that I can answer that.

10 What will the impact be on affordable housing?  
11 What will the impact be on state or federally mandated  
12 programs that you have to go forward with?

13 9111 lists eight factors that you can consider.  
14 One of the prior speakers referenced loopholes. This  
15 ordinance, this initiative, this proposal exempts those  
16 common law nuisances which exist under the case law,  
17 the common law. It does not exempt nuisances by  
18 statute, by ordinance.

19 As an example, if this honorable Board wanted to  
20 pass an ordinance next week cleaning up junk cars off  
21 of people's front lawns, like they've recently done in  
22 Bakersfield, that may trigger this ordinance under any  
23 action provision.

24 Likewise, if you want to stop crack houses and  
25 initiate an ordinance to remove those blights on the

1 community, prostitution houses, those blights on the  
2 community.

3 Recently there was action taken regarding a  
4 property owner that decided that he wanted to store  
5 3,400 wrecked cars on his property, he had a right to  
6 do that. His neighbors felt otherwise. They requested  
7 Board action, not in this County but in an adjacent  
8 county. That would have required action under this  
9 initiative.

10 Your ability to fill loopholes will essentially be  
11 frozen as of the actionable date of this initiative.  
12 And that needs to be evaluated.

13 Additionally, as caring as the people were that  
14 put this together, they would wish that the world would  
15 stop now, that everything would be frozen, that all the  
16 existing ordinances and protections that are in place  
17 would be enough for us.

18 But you know and I know that there will be  
19 earthquakes, there will be fires, we can run out of  
20 water. And you or your successors will have to deal  
21 with those natural disasters. And you can't do it with  
22 your hands tied behind your back so that you think you  
23 have to pay and pay and pay in order to protect the  
24 commonwealth.

25 That needs to be evaluated. And you need to do it

1 independently and it needs to be done by statute. And  
2 I urge you to do it. Thank you.

3 CHAIRPERSON DILLON: Thank you.

4 MR. STOLZ: Good morning. Rex Stolz, Saint Helena  
5 Chamber of Commerce.

6 It's quite a cross-section of groups and  
7 organizations that are up here today before you asking  
8 for this 9111 report. And add the Saint Helena Chamber  
9 of Commerce to that list of groups and organizations.  
10 We have about 550 members, businesses from in and  
11 around the Saint Helena area.

12 And our board of directors has asked me to come  
13 here this morning and ask you to do a comprehensive  
14 fiscal analysis of this initiative as well via the 9111  
15 report.

16 We're concerned principally with the fiscal  
17 impacts of the proposed initiative both to Napa County  
18 and to the voters of Napa County, and especially as it  
19 pertains to the inevitable lawsuits that will result of  
20 the Fair Payment for Public Benefit initiative.

21 The Saint Helena Chamber feels that information is  
22 a good thing. It seems reasonable that our elected  
23 officials and our voters would be very informed about  
24 this. And our request for this is based on fiscal  
25 responsibility and informed decision making.

1           So please give that consideration and request a  
2 9111 report. Thank you.

3           MR. HENKE: George Henke, 5445 Dry Creek Road.

4           I think we're getting things a little too  
5 complicated here. In my occupation, my buddy looks  
6 over at me and tells me to apply the kiss principle.  
7 That is keep it stupid, simple, or keep it simple,  
8 stupid, whichever way you want to go.

9           I thought law and whatnot was for the people, by  
10 the people. Now, there's a difference between taking  
11 and eminent domain.

12           If a piece needs developers, oh, yes, this is  
13 going to affect us, I can't see how, because if you buy  
14 the property, the County isn't involved in it from the  
15 sense that they don't have to pay whether he sold it  
16 under price. That's between him and whoever bought it.  
17 So it would have no effect.

18           If you gave the property to somebody, you may  
19 reduce its cost or its value. That's between you --  
20 you gave the property away, and the County would not  
21 have to pay for that particular loss of value because  
22 you gave it away.

23           If passing is a taking and it's so good, then is  
24 it worth what you're going to pay for it. That would  
25 be your decision.

1           So when you make a decision that you're going to  
2 degrade somebody's property, take a look at what you're  
3 doing before you do it.

4           Now, the Sierra Club, I appreciate their efforts.  
5 And they're talking about it would affect the trails,  
6 you couldn't have those, et cetera. My comment to the  
7 Sierra Club is buy the trail material you want from the  
8 person, it has no effect on the County, you've done a  
9 service to the community, and you have your trail. A  
10 little bit of overreaction here, I think.

11           But anyway, part of that is in that Read and  
12 Understand that we went through about the expense of  
13 the paper trail.

14           If all you do is put a line on the document and  
15 they sign it, there is no loss or no loss of revenue  
16 and there is no paying attention to a paper trail.  
17 It's signed on the document that you're going to pass  
18 and it follows all the way along. So anyway, all  
19 you're reducing is the cost of the ink to sign the  
20 document.

21           Please try the kiss principle.

22           CHAIRPERSON DILLON: Are there any other members  
23 of the public wishing to address us? I'm giving you  
24 time to get here, George.

25           MR. BACHICH: I'm George Bachich, president of

1 Napa Valley Land Stewards Alliance. We sponsored the  
2 initiative.

3 The land stewards above all are in favor of the  
4 free and open exchange of ideas and maximizing the  
5 availability of information, open debate and making  
6 good decisions based on merits.

7 We do not want to do or say anything that would  
8 discourage a study or any other method of gathering  
9 relevant information.

10 However, we would like to be sure that the study  
11 is complete and useful and not just an arbitrary  
12 hysterical reaction.

13 I would like to remind you that the initiative as  
14 worded has absolutely zero impact the day it passes.  
15 So there is nothing to study. It will have no impact,  
16 can have no impact until the Board of Supervisors takes  
17 some new action that results in a new Napa County land  
18 use restriction that damages specific property values.

19 So in order for your consultant or your staff or  
20 whoever does this study to have anything to study,  
21 you're going to have to tell them what restrictions you  
22 had in mind, what ordinances you might pass, so that  
23 they can properly evaluate the impact. Without that  
24 information, they're being asked to study thin air.

25 So I would urge you to make the study useful, come

1 up with a list of the ordinances and restrictions that  
2 you think would be useful and beneficial to the County,  
3 and provide those to your consultant and ask that the  
4 impact of our ordinance on those in combination with  
5 the enactment of those new restrictions be evaluated.

6 I would like to see the results of that, and I  
7 know all the voters would too. Thank you.

8 MR. HALEY: I'm Michael Haley. I'm on the board  
9 of the Napa Valley Land Stewards as well.

10 I would like to say that I agree with what George  
11 just said. And I would like to add that since the  
12 Sierra Club and the Farm Bureau and some of the  
13 stakeholder organizations here in Napa obviously have  
14 very grave concern about it, I would agree that George  
15 Henke that a lot of this, you know, catastrophe,  
16 destroy the County seems over the top.

17 So I think it would be very important in doing  
18 this study to do what George said, let's get some  
19 realistic things that you might be contemplating, new  
20 regulations, because it will only apply to new  
21 regulations.

22 And moreover, what I want to add to what George  
23 said is I would hope that the Sierra Club and the Farm  
24 Bureau and any of the other organizations that are  
25 concerned come forth with their plans, what they have



1 in mind, to be added to the study. Because otherwise  
2 it's a meaningless study.

3 No new regulations, the cost is zero. If you do  
4 something like 500-foot setbacks, no further  
5 development in the County, you know, very, very onerous  
6 regulations, then the cost is in the gazillions. Okay.  
7 So we know that. We don't need a study for that, I can  
8 tell you that right now for free.

9 So what we need are realistic ideas about what  
10 exactly you people have in mind, what are you wanting  
11 to do.

12 Because the only reason it seems to me that  
13 someone could be concerned about this is that they have  
14 something in mind they want to do that they think the  
15 fair pay initiative is gonna prevent them from doing.

16 So let's get our cards out on the table and let's  
17 look at these things and really see how much this is  
18 gonna cost us. And let's look and see how much it's  
19 gonna hurt the individual property owners in the County  
20 if we do these things and is that fair to them.

21 That's the whole philosophical basis behind this.  
22 Thank you.

23 MS. PRESTON: Good morning. I'm Marjorie Preston.  
24 We own a vineyard at 8490 Saint Helena Highway.

25 I heard that you were talking about putting this

1 initiative on the ballot without even publishing the  
2 text of the initiative.

3 CHAIRPERSON DILLON: You may have heard that, but  
4 we already took action this morning to --

5 MS. PRESTON: Okay. Very good. Because as I  
6 discussed with my husband this morning, it doesn't make  
7 any difference if it's on the computer or not  
8 (unintelligible).

9 I was a little appalled hearing people talk about  
10 the community good versus the individual good. This is  
11 a democracy. This is the United States of America, not  
12 Russia.

13 In fact, it was written in our Constitution that  
14 we have a right to own property. And the Constitution  
15 does not talk about the right of the government to take  
16 away our property. And in fact, it provided the only  
17 way the government could was under eminent domain for  
18 the public welfare.

19 I have a concern because I see a lot of things  
20 going on. For instance, I can envision a time that you  
21 came to us and asked us to rip out grapes so you could  
22 put a bike trail through.

23 Now, I'm not opposed to bike trails but I am  
24 opposed to ripping out our grapes. I think if a bike  
25 trail is something is so desirable, the entire

1 community should pay for it, not the poor person whose  
2 property happens to be impacted by it. Thank you.

3 CHAIRPERSON DILLON: Thank you.

4 Is there any other member of the public wishing to  
5 address us at this time regarding the potential 9111  
6 report?

7 All right. I'll turn it back to the Board.  
8 Supervisor Wagenknecht.

9 SUPERVISOR WAGENKNECHT: If the previous issue was  
10 close, this one is not even close as far as regarding  
11 the 9111.

12 There's such a vast difference in the way of  
13 looking at the (unintelligible) that there needs to be  
14 some sort of impartial analysis of the initiative so  
15 that anybody can have some sort of confidence that  
16 there is some information that is not tainted  
17 (unintelligible) just our world views, they're so  
18 startlingly different as we're listening to them.

19 And so, you know, I think it's just very clear  
20 that we need to do a 9111 on this one. So I will move  
21 that at the appropriate point.

22 CHAIRPERSON DILLON: Supervisor Moskowitz.

23 SUPERVISOR MOSKOWITE: Well, I would have no  
24 problem with a report from 9111, except that it seems  
25 to me it's just a means of delaying this for the

1 November ballot. And that's why I'm gonna vote against  
2 it because I think it's just a delay tactic to delay  
3 this being on the November ballot.

4 CHAIRPERSON DILLON: All right.

5 SUPERVISOR LUCE: Okay. I'll speak.

6 CHAIRPERSON DILLON: You have to.

7 SUPERVISOR LUCE: I told Ben that I'd probably  
8 vote against a 9111 triple 'cause I was concerned a  
9 month ago on the same sort of thing, that a report  
10 wouldn't add additional information beyond what we're  
11 gonna debate in any case.

12 But if we could do an objective third party review  
13 that would maybe dig a little deeper and not look like  
14 it's simply the County pushing back against some, you  
15 know, ordinance that's being imposed upon it, that I  
16 believe would have more benefit to all of us.

17 I do have some concerns. I mean a couple of these  
18 guys who wrote this initiative I appointed to our  
19 General Plan Committee because I'm very concerned about  
20 property rights. But I'm also very concerned that this  
21 ordinance goes way too far, that it does tie our hands.

22 The problem is that the world changes. You make  
23 it look as it's only us five up here that change. But  
24 as we have new pestilence come in and we discover  
25 certain plants can no longer be brought into our

1 County, as some new property developer discovers that  
2 he's got a new property right that nobody had ever  
3 thought of and now he's, you know, renting out,  
4 whatever, doing whatever. The world changes around us.

5 And that's the problem is that tomorrow is gonna  
6 be yet one more issue that nobody had ever thought of.  
7 And here it is and we're having to deal with it.

8 It would be nice if everybody would just stop,  
9 okay, just don't move and we'll just be here for the  
10 next 10, 15 years and enjoy ourselves. But that's not  
11 what happens.

12 There's lawyers knocking on the doors trying to  
13 figure out how to rent houses, rent properties. I mean  
14 it's just one thing after another. And occasionally  
15 there's something you haven't thought of and it's a big  
16 loophole and it needs closing.

17 And when any action of the Board that reduces  
18 property value of no particular measure is the  
19 criteria, then it's gonna be closed door land use.  
20 We're gonna meet behind closed doors every week with  
21 the next guy who's got an issue with us and we're gonna  
22 decide the County's future behind closed doors,  
23 negotiate away your hard fought elected perspectives as  
24 to what this County is gonna look like because we can't  
25 afford to continue to fight these lawsuits.

1 I guess I'm getting ahead of myself. But I've got  
2 issues with this. And I'm hoping, 'cause I do support  
3 property rights, anybody who's followed me knows that  
4 that's a significant concern of mine, and I do get  
5 angry when we overstep our bounds like we did on  
6 Measure P. And if Measure P were the issue, then this  
7 would be an easy decision.

8 But it's not Measure P that's the issue. It seems  
9 we've gone way further, in a new direction here that  
10 does concern me with regard to the impact and our  
11 County.

12 And like the first cancer cell, it may not look  
13 all that significant. But after time, it really takes  
14 its toll. And I'm concerned that this could be that  
15 for a lot of our land use policies and the things that  
16 we've put in place that protects the County.

17 So the question being what is it that we want to  
18 study, I would like to know as things change, as the  
19 need to change perhaps due to pesticides - pestilence,  
20 glass sharp shooter, if we need to regulate the type of  
21 plants that are moved into the County, would this  
22 affect that. If we had to regulate perhaps in a  
23 different way how pesticides are applied would this  
24 affect that? If we have to change the manner in which  
25 properties are rented or leased would that affect that?

1           If anything changes in the environment that  
2 requires the County to respond, would we be able to do  
3 that without having a huge national treasury to hand  
4 out to whoever wants to make a claim against it.

5           CHAIRPERSON DILLON: Thank you. Any other  
6 comments? You don't have to comment.

7           All right. Well, I'm certainly in favor of a  
8 9111. I think the fiscal impacts could be enormous.

9           I think that the housing element issues, we need  
10 to do affordable housing overlays like we did before in  
11 2004. It's a public benefit but it's an alleged or  
12 perceived cost borne by the neighbors and what will be  
13 the result of that, do the neighbors have a right to  
14 sue. If they do and the affordable housing is never  
15 built, do they owe the payment back.

16           I'm concerned about inconsistencies between  
17 planning and zoning if we have inconsistencies and we  
18 use California law that says the land use designation  
19 trumps zoning, does that create a situation where  
20 someone can bring a suit against us. And we had one of  
21 those situations recently.

22           I'd also like an analysis of the extent to which  
23 the findings are inaccurate or any of the text is  
24 inaccurate. There are two or three places in the  
25 findings, in the findings that I don't think are

1 correct, that they state are indeed policy but I'm not  
2 aware are indeed policy.

3 I'm concerned about what's defined as an action,  
4 that any land use action is not necessarily an  
5 ordinance. Is it when he uphold appeals, is it when --  
6 if we decide that we have to, because of water resource  
7 limitations, increase minimum parcel size in a  
8 particular part of the County. Would we have to pay  
9 those folks when there was a legitimate reason that was  
10 for the good of all those folks who live there.

11 I'm concerned about the fact that there's no  
12 statute of limitations. There's nothing that says when  
13 the hundred calendar days starts. It's vague and  
14 uncertain. The statute of limitations, can anybody sue  
15 forever? Does it run with the land?

16 If a particular property owner -- if all the  
17 property owners in Coombsville come to us and say it's  
18 fine with us if you -- and I'm just using that as an  
19 example because it is an impact of groundwater area.

20 If they all come and say it's fine with us if you  
21 do this and then any one of them sells their property,  
22 does this right to sue -- you know, if there's no  
23 statute of limitations, does it run with the land?

24 I mean those are just questions I have. And I  
25 have no idea from reading this what the answers are.



1 So I think we need the 9111.

2 It doesn't say who pays to establish the decrease  
3 so if (unintelligible) the property and County own bear  
4 their own attorneys' fees and costs in a situation like  
5 that.

6 You know, we're working very hard with our casino  
7 consortium group. And what if we get to a place where  
8 we get the Federal Government to say, we would like,  
9 that they will honor local regulations that prohibit  
10 casinos. Would we have the ability to pass an  
11 ordinance to prohibit them, or would we have to pay  
12 everybody who potentially -- because right now we don't  
13 have that right.

14 You know, that's an unanswered question. And yes,  
15 it's something in the future but I'm like Mark, I don't  
16 have a crystal ball.

17 I'm concerned about how this works vis-à-vis  
18 eminent domain and condemnation. I'm assuming someone  
19 wouldn't be able to (unintelligible) twice. But  
20 there's a whole process in the law already for when we  
21 acquire -- when any government for instance acquires  
22 land for a bypass. We have a process already that we  
23 buy the land, we have an eminent domain process.

24 And I'm not familiar specifically with those  
25 processes, but I don't know -- I want to know how they

1 work with this if we had to do something that would  
2 trigger the -- would trigger this.

3 I have a concern about the effective date.

4 There's an inference on the proponent's website that  
5 it's effective as of the date of filing. It actually  
6 says I think that it's not effective any further back,  
7 any farther back than the date of filing.

8 But it seems to me in looking at it that it's  
9 effective on the date that it's passed, if that's what  
10 happens. So I have a concern about the effect.

11 I think the voters are entitled to know what is  
12 the effective date. And that to me is not clear.

13 I'd like to know what the meaning of the term  
14 "action to enforce" means. I have questions about  
15 public nuisances, not unlike the kind that were raised,  
16 the kind that were raised by Mr. Pollock.

17 Certain aspects of farming are considered public  
18 nuisances. And that's why we have a right to farm law.  
19 And I want to make sure that if we needed to bolster  
20 that ordinance, would it fall under the Exception 2 or  
21 not.

22 I don't know that I need to read all these. I  
23 have a lot of questions about this. I have really  
24 thought about it, and lots of questions.

25 So I'd like those (unintelligible) to the study as

1 part of the 9111 report. And if the Board wishes me to  
2 go through them, I will.

3 SUPERVISOR WAGENKNECHT: As far as I'm concerned,  
4 you can give them to staff.

5 CHAIRPERSON DILLON: Okay.

6 And Supervisor Wagenknecht.

7 SUPERVISOR WAGENKNECHT: Well, at this point, I  
8 would move that we instruct that there be a 9111  
9 report. And I'm looking to Hillary, I guess,  
10 Ms. Gitelman, you would be the person that would put  
11 that together.

12 MS. GITELMAN: Well, thank you for asking.

13 It would be very useful to me, whether staff is to  
14 prepare this report or whether we retain the services  
15 of a consultant, if we could get very clear about what  
16 the scope of the effort will be.

17 I think in your staff report, County Counsel  
18 included eight items that could be included in the 9111  
19 report if you wish. And I'd just like --

20 SUPERVISOR WAGENKNECHT: The eighth one is a wild  
21 card.

22 MS. GITELMAN: Yeah. All others than Number 8,  
23 maybe that's Chair Dillon's list of questions.

24 But it would be useful for me to just hear from  
25 you that this is indeed the scope of work that you'd

1 like us to proceed with.

2 SUPERVISOR WAGENKNECHT: Well, you know, as part  
3 of the motion, I was gonna ask that we have an outside,  
4 you know, person, outside consultant do this. Because  
5 we've heard both sides asking for that.

6 Not that any of us have lack of confidence in your  
7 ability to do it, it's just you've got a lot on your  
8 plate with the General Plan and other things. And this  
9 is a very quick turnaround time to come up with this  
10 information.

11 To me, as I was looking at the eight items --  
12 well, actually seven items plus the wild card eighth  
13 item, you know, I don't see any of those that I don't  
14 want to have an answer to.

15 And then I heard Supervisor Luce and Supervisor  
16 Dillon ask a number of questions that would go under  
17 Number 8 in the wild card section.

18 MR. WESTMEYER: The problem is that the Board has  
19 to vote on anything other than 1 through 7 would be in  
20 the report. So I guess, Supervisor Dillon, if she has  
21 a list, she could have that incorporated somehow and  
22 have people take a look at it. Otherwise, I would  
23 recommend you orally read them into the record.

24 CHAIRPERSON DILLON: Okay. Well, I'll go through  
25 them.

1 SUPERVISOR DODD: Madam Chair --

2 CHAIRPERSON DILLON: Go ahead.

3 SUPERVISOR DODD: -- do I have to stay here and  
4 listen to this? Could I take a two-minute recess?  
5 I've got to invoke the Berelman bladder rule --

6 SUPERVISOR: Which he would have done about an  
7 hour ago.

8 SUPERVISOR DODD: 15 minutes ago, I might had.

9 SUPERVISOR: He'd have thrown something at her.

10 SUPERVISOR DODD: Is that all right?

11 SUPERVISOR: Yes.

12 SUPERVISOR DODD: Thank you. Perhaps the Chair  
13 might want to take a break.

14 CHAIRPERSON DILLON: Why don't we take --

15 SUPERVISOR DODD: A break.

16 CHAIRPERSON DILLON: We have been sitting in these  
17 chairs for two hours-plus straight. So it's kind of an  
18 inopportune moment, but we'll come back in about five  
19 minutes.

20 (Recess taken.)

21 CHAIRPERSON DILLON: I think where we left off was  
22 I was going to bring up a few more things. And I'll  
23 try to summarize this to some extent.

24 I have concerns about Exception 3 with the  
25 definition of inherent. It's vague or uncertain on all

1 restrictions. For instance, particularly new homes  
2 homes, if people remodel, is that inherent in the fire  
3 code and so forth.

4 Again my general concern is that restrictions that  
5 we might need to build into fire and building codes or  
6 health and safety regulations or solid or hazardous  
7 waste regulations in the future, would anything that we  
8 might need to do be considered inherent and therefore  
9 come under the exception.

10 I'm concerned about Exception 4 and the fact that  
11 it doesn't basically allow us any discretion of any  
12 kind. And if we have a Federal or State mandate to  
13 implement a regulation where we're given any latitude  
14 at all, we would be required to enact the least  
15 restrictive version of it unless we compensated  
16 property owners. And the least restrictive version  
17 might not be the most appropriate one.

18 And I go back to the AB 885 regulation as an  
19 example. We're trying to get them to do locality  
20 specific, soil specific regulations, because we don't  
21 think that statewide regulations are appropriate for  
22 Napa County. Because desert soil is different for  
23 septic system in granite in Placer County than loam in  
24 Napa County.

25 But if they enact, if they promulgate some

1 regulations that require us to change our ordinance, if  
2 we don't do the least restrictive version of it so that  
3 it would fall under Exception 4, then we fall into  
4 Exception 5. And we would have to take our septic  
5 system regulation to the voters for approval. And I'd  
6 just like some discussion of that in the 9111 report.

7 I'm concerned about floodplain, floodway issues as  
8 another example. Every few years we have to amend our  
9 code to comply with FEMA, and we have discretion  
10 sometimes. Would we have to take that to a vote of the  
11 people.

12 Would there be a problem if we voted on something  
13 in December '06 and we couldn't take it to the vote of  
14 the people for another 18 months because of this?

15 And last but not least, I'm very concerned about  
16 the legality of this, about the constitutionality of  
17 partial taking and just the general legality of the  
18 voters being able to enact something like this.

19 SUPERVISOR WAGENKNECHT: So at this point my  
20 motion is to do the -- to answer the questions, the  
21 first seven questions, Supervisor Luce and Supervisor  
22 Dillon provided ample questions for any other matters  
23 the Board of Supervisors request.

24 And I request that we do that, hire an outside  
25 consultant. And I would anticipate it would be the

1 same September 6th meeting to accept this report and  
2 place it on the ballot.

3 SUPERVISOR LUCE: And I will second that. And to  
4 get at what I'm not getting, I guess I can quote Plato,  
5 that, "I'm wiser than all men because I know that I  
6 know nothing."

7 And that's kind of where I'm at on this because  
8 it's a list of all those other things that I haven't  
9 thought of that somebody's who's experienced in one set  
10 of law and another set of law and together they may  
11 give us some more examples of things that we should be  
12 thinking of.

13 And so if we could add that to the list, what are  
14 the other things that might be impacted without  
15 necessarily an analysis of those costs, but at least a  
16 list of things that ought to at least be considered as  
17 we look at this.

18 And recognizing, as someone mentioned during the  
19 break, you know, there are positive benefits. I mean  
20 if this works and people can feel secure in their  
21 property rights and our hands really aren't as tied as  
22 perhaps I'm concerned they are, then this would be a  
23 fine ordinance. But that's hopefully what we find out.  
24 So just add that to the list.

25 CHAIRPERSON DILLON: Is that all right with the



1 motion maker?

2 SUPERVISOR WAGENKNECHT: Certain.

3 CHAIRPERSON DILLON: Do we have a -- I'm sorry.

4 You seconded. All right. Any further discussion?

5 We have a motion and a second on the floor. All  
6 in favor.

7 (Ayes.)

8 CHAIRPERSON DILLON: Opposed.

9 SUPERVISOR MOSKOWITE: No.

10 CHAIRPERSON DILLON: Motion carries.

11 MR. WESTMEYER: I've been talking to the Planning  
12 Director, and she's planning on doing the planning.  
13 And because you've raised all these legal issues, we'll  
14 probably doing the same thing Hillary is, which is  
15 contracting with a law firm to provide the legal  
16 analysis.

17 We clearly won't be using Shute Mihaly since the  
18 Farm Bureau, it's my understanding they have already  
19 been retained by the Farm Bureau to present what  
20 presumably would be a one-sided review of the  
21 situation.

22 So we're gonna have to find a different law firm  
23 that would provide -- and the direction would be  
24 presumably to provide a neutral, impartial analysis of  
25 the legal issues that have been raised.

1 CHAIRPERSON DILLON: All right.

2 SUPERVISOR WAGENKNECHT: And I would move that we  
3 do the --

4 MR. WESTMEYER: You have two other issues, whether  
5 the 500-word fiscal analysis should be included. And  
6 I'm presuming the September 6th meeting would be also  
7 utilized for this purpose.

8 SUPERVISOR WAGENKNECHT: And I'm just gonna move  
9 that we include the 500-word fiscal analysis in this  
10 package.

11 SUPERVISOR LUCE: Second.

12 CHAIRPERSON DILLON: We have a motion and a second  
13 to include the fiscal analysis. All in favor.

14 (Ayes.)

15 CHAIRPERSON DILLON: Opposed?

16 SUPERVISOR DODD: No.

17 CHAIRPERSON DILLON: Motion carries. And we're  
18 also available on September 6th.

19 SUPERVISOR WAGENKNECHT: We've already given that  
20 direction.

21 CHAIRPERSON DILLON: All right. So I think that  
22 concludes Item 9B on the calendar. Thank you all for  
23 your patience and your participation.

24 (End of this item on CD.)

25 --o0o--

1 STATE OF CALIFORNIA )  
 ) ss.  
2 COUNTY OF CONTRA COSTA )  
3

4 I, JOHN A. ZANDONELLA, do hereby certify:

5 That I am a Certified Shorthand Reporter of the  
6 State of California, License No. C-795;

7 That the foregoing pages are a true and correct  
8 transcript of the proceedings before the Napa County  
9 Board of Supervisors, County Building, Board Chambers,  
10 Napa, California, except as noted "unintelligible" or  
11 "inaudible."

12 I further certify that I am not interested in the  
13 outcome of said matter nor connected with or related to  
14 any of the parties of said matter or to their  
15 respective counsel.

16 Dated this 11th day of August, 2005, at Concord,  
17 California.

18

19

20 JOHN A. ZANDONELLA, CSR License C-795

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22

23

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**Appendix D:**  
**Supplemental Analysis of**  
**“The Fair Payment for Public Benefit Act”**  
**Prepared by**  
**Kronick Moskowitz Tiedemann & Girard**

## Appendix D

If approved by the voters or enacted by the Board of Supervisors, the “Fair Payment for Public Benefit Act” (“the Initiative”) will create a new class of claims for money damages against the County. Under the Act, owners of real property in the County’s unincorporated area will be able to seek compensation from the County for decreases in the value of their property that results from action by the Board that further limits or restricts use of their property.

The validity of the Initiative must be evaluated in the context of State and Federal law regarding eminent domain, inverse condemnation, regulatory takings, state law regarding immunities of public entities, claims for money damages against public entities, and the law of preemption. Article XI, section 7 of the California Constitution provides that a county “may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” A conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication. (*Shea Homes Limited Partnership v. County of Alameda* (2003) 110 Cal.App.4<sup>th</sup> 1246, 1259; *Building Industry Association of Northern California* (1996) 45 Cal.App.4<sup>th</sup> 719, 724.) Local laws that conflict with state law are invalid. Similarly, state and local laws that conflict with federal law are invalid under the Supremacy Clause of Article 6 of the United States Constitution. (See *Jevne v. Superior Court* (2005) 35 Cal.4<sup>th</sup> 935, 949.)

Eminent domain is the power to take private property for public use. Both the federal and California constitutions require the payment of just compensation when private property is taken. (U.S. Const., 5<sup>th</sup> Amend.; Cal. Const. Art. I, §19.) Eminent domain is the vehicle by which government acquires property for public use when voluntary purchase and sale is not possible.

Actions in inverse condemnation are also based on provisions in the state and federal constitutions. Inverse condemnation differs from eminent domain in that the legal action is initiated by the property owner instead of the public agency. A physical invasion of property that directly and substantially burdens property can be sufficient to support a claim for inverse condemnation. (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 119-120.)

A “regulatory taking” is a type of inverse condemnation that occurs when government imposes restrictions on the use of property that deprive the owner of substantially all the value of the property. (*Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1019.) The United States Supreme Court stated the rationale for this rule in a 1922 case involving a Pennsylvania law that outlawed a certain type of coal mining:

Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law. As long recognized some values are enjoyed under an

implied limitation and must yield to the police power. (*Pennsylvania Coal Co. v. Mahon* (1922) 260 U.S. 393, 413.)

In the absence of an obligation to pay compensation, the payment of “damages” to a property owner by the County might be an illegal gift of public funds. (See Cal. Const. Art. XVI, § 6; and *Jordan v. California Dept. of Motor Vehicles* (2002) 100 Cal.App. 4<sup>th</sup> 431.) The Initiative would obligate the County to pay compensation for decreases in the value of property under circumstances that are not currently recognized as sufficient to support claims under the constitutionally-based theories of inverse condemnation or regulatory takings. Specifically, the Initiative authorizes the payment of compensation for restrictions on the use of property that might not deprive the property of substantially all its value.

Claims for money damages may be brought against the County on two grounds under state law. The first is breach of contract, which is not applicable here. The second is for personal injury or property damage. Claims for money damages are governed by the provisions of the Government Claims Act, Government Code sections 810 to 998.3. Government Code section 815 provides, in pertinent part:

Except as otherwise provided by *statute*:

(a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person. (Emphasis added.)

“Statute” is defined by Government Code section 811.8:

“Statute” means an act adopted by the Legislature of this State or by the Congress of the United States, or a statewide initiative act.

Because the Initiative will enact a local ordinance, it is not a “statute” under section 811.8 and is not sufficient to support claims for money damages against the County. (Gov’t Code § 815.)

The local electorate’s right to exercise the initiative and referendum is generally co-extensive with the legislative power of the local governing body. (See Cal. Const. Art. II, § 11, and *DeVita v. County of Napa* (1995) 9 Cal.4<sup>th</sup> 763, 7775. Because the initiative and referendum were reserved by the people in the 1911 Amendment to the California Constitution, courts presume that legislative decisions of a board of supervisors are subject to the initiative and referendum. (*DeVita, supra*, 9 Cal.4<sup>th</sup> at 775-776.) However, the electorate’s power is limited. The California Supreme Court has described the limits of the power as follows:

The presumption in favor of the right of initiative is rebuttable upon a definite indication that the Legislature, as part of the exercise of its power to preempt all local legislation in matters of statewide concern, has

intended to restrict that right. [Citations.] Accordingly, we have concluded that the initiative and referendum power could not be used in areas in which the local legislative body's discretion was largely preempted by statutory mandate. (*DeVita, supra*, 9 Cal.4<sup>th</sup> at 776.)

A local initiative cannot override a state law that fully occupies a field of law or that it contradicts.

The Government Claims Act fully occupies the field of non-constitutional claims against local public entities. The Legislative Committee Comment to Government Code section 815 expresses the Legislature's intent to preempt all local laws regarding the liability of local public entities. It states:

This section abolishes all common law or judicially declared forms of liability for public entities, except for such liability as may be required by the state or federal constitution, e.g., inverse condemnation. In the absence of a constitutional requirement, public entities may be held liable only if a statute (not including a charter provision, ordinance or regulation) is found declaring them to be liable. . . .

As originally introduced, this section used "enactment" instead of "statute." The word "statute" was substituted because the terms and conditions of liability of public entities are matters of statewide concern and should be subject to uniform rules established by the action of the Legislature. (Gov't Code § 815, leg. comm. comment.)

Courts interpreting the Government Claims Act have uniformly held that the liability of local public entities is a matter of statewide concern and cannot be altered by local legislation. (See, e.g., *Societa per Aziona de Navigazione Italia* (1982) 31 Cal.3d 446, 463 (also holding that the definition of "statute" in Government Code section 811.8 does not include a local ordinance); *City of Ontario v. Superior Court* (1993) 12 Cal.App. 4<sup>th</sup> 894, 899; see also *Gonzales v. City of San Jose* (2004) 125 Cal.App.4<sup>th</sup> 1127, 1135-1136.) The California Supreme Court has written:

[T]he intent of the [Government Claims Act] is not to expand the rights of plaintiffs in suits against governmental entities, but to confine potential governmental liability to rigidly delineated circumstances: immunity is waived only if the various requirements of the act are satisfied. [Citation.] (*Brown v. Poway Unified School Dist.* (1993) 4 Cal.4<sup>th</sup> 820, 829.

Adoption of the Initiative would not constitute a waiver of the County's immunity from claims for money damages that do not satisfy the Government Claims Act. In *City of Orange v. Valenti*, (1974) 37 Cal.App.3d 240, the Court of Appeal held that no agent of the state can waive the state's immunity from liability; liability of public entities may only be derived from a statute. (*City of Orange, supra*, 37 Cal.App.3d 240, 245.)

The Initiative would create a new class of liability claims against the County of Napa based on local ordinance. But, according to the Government Claims Act, local public entities are immune from suit for money damages except as provided by state statute, the state or federal constitutions, or contract. We believe the Initiative conflicts with the Government Claims Act and will be declared invalid by the courts.

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**Appendix E:**  
**Memorandum of March 16, 2005**  
**General Fund Five Year Forecast**  
**Prepared by**  
**County Executive Office**



# COUNTY of NAPA

NANCY WATT  
County Executive Officer

To: Board of Supervisors

From: Nancy Watt, County Executive Officer

Date: March 16, 2005

Subject: **GENERAL FUND FIVE YEAR FORECAST**

## Introduction

As your Board will recall, on March 1<sup>st</sup> we provided you with a mid-year review of the County's fiscal status. That review included an estimate of what the General Fund's fiscal condition will be at the end of the current (2004-05) fiscal year. As the next step in the budget process, we are providing you with a forecast of what the General Fund's fiscal condition could be like over the next four years.

As you know, in making budget decisions for the next year it is important to look at future years as well. This is because revenue/expenditure decisions made in one year can have a significant impact on the resources that will be available to fund General Fund programs in future years.

## Forecasting Methodology

Given all the uncertainties, forecasting revenues and expenditures a number of years into the future is a problematic undertaking at best. We base our future years' projections in part on estimates of current year revenues and expenditures, and actual current year revenues and expenditures may differ from those estimates. In addition, we make a number of assumptions about what will happen over the next four years in terms of such things as inflation rates, state budgets, state law changes, union contract negotiations and local economic conditions.

Given our inability to predict the future, in many cases our assumptions may well not come to pass. In addition, with all the complexities involved, it is likely there will be differences between what we project and the actual numbers, even assuming most of our key assumptions are correct. In light of the problematic nature of our revenue/expenditure projections, we are providing you with three different forecast scenarios:

**Baseline Scenario :** This scenario is based on a continuation of the status quo in terms of budget policies, state laws and funding levels and general economic conditions, with adjustments made only for known or very likely changes in revenues/expenditures. The following are some of the key assumptions used in this scenario:

- Our projected Net County Cost for FY2004-05, as reflected in the Mid-Year fiscal report to your Board, is considered the “base year” for future projections.
- Generally the projections assume no staff increases after the current (2004-05) fiscal year. One exception to this is the assumption of staff increases needed to operate the new Juvenile Hall, starting in FY2005-06.
- The projections include \$1 million a year in funding for the General Plan update starting in FY2005-06, \$400,000 a year in debt service for the new parking garage starting in FY2006-07, \$200,000 a year in payments to the City of Napa starting in FY2006-07 as called for in the Housing Element Memorandum of Understanding with the City, changes in debt service on certificates of participation as a result of recent refundings, and other known factors.
- The projections assume General Fund supported capital expenditures of \$1.6 million in FY2005-06 (for projects identified in the FY2005-06 requested budget) and \$1,000,000 in each of the other years for as-yet unidentified projects.
- The projections do not assume additional fee increases in the property departments, even though the Board previously concurred with proceeding with fee increases to keep pace with County salary and benefit cost changes on an annual basis. If your Board does approve fee increases in accordance with your previous policy direction, this could add approximately \$750,000 a year in revenue to the property departments, such as Conservation, Planning & Development, Public Works and Environmental Management.
- The projections assume that inflation rates will remain in the area of 3% annually and that the “cost of doing business” will increase by approximately 3% a year for most contracts or purchases. The projections assume that salary and retirement costs will increase by approximately 5% annually (3% for cost of living and 2% to cover step increases for eligible employees), with periodic higher adjustments to reflect the result of equity studies. The projections assume that medical insurance costs will increase at a declining rate starting at 15% in FY2005-06, based on projections provided by the County’s actuarial consultant, and that the County’s share of employee retirement costs will only increase marginally over this time, again based on projections by the County’s actuarial consultant.
- The projections assume that most revenues will grow or decline based on past trends or known adjustments and that, with certain exceptions, departmental revenue increases will generally keep pace with cost increases (or, in the case of certain programs, that the County will not back-fill reductions in state or federal funding). In terms of major discretionary revenues, the projections assume that property tax revenues will increase by

7% a year through FY2007-08 and by 5% in FY2008-09, and that sales tax revenues will increase by 2% a year.

- In accordance with your Board's Budget Policies, the projections assume that all discretionary revenues that your Board has not previously earmarked for a particular purpose will be available to fund any General Fund programs as needed. For example, revenues resulting from the recently approved Transient Occupancy Tax increase are treated like all other discretionary resources and used to fund general operations.
- The projections assume no major increase in General Fund supported program costs, beyond the normal increases in the cost of doing business, except as described above.
- The projections assume no downturn in the state and local economies.
- The projections assume no major changes in state or federal funding sources and methodologies. For example, the projections do not include the increase in County Cost that would result from the Governor's proposal to reduce the State's participation in In Home Support Services (IHSS) provider wages (which could cost the General Fund \$400,000 a year) or his proposal to eliminate Rural and Small Counties Local Assistance Program (RASCLEAP) funding for the Sheriff's Department.

Revenue Reduction/Expenditure Increase Scenario: This scenario is designed to provide a measure of what the impact on the General Fund might be of a reduction in discretionary revenues and/or increase in Net County Cost (the bottom line impact of a discretionary revenue decrease is the same as a Net County Cost increase). To illustrate this impact, this scenario utilizes all of the assumptions described above except that it assumes a \$2,000,000, or 3%, increase in annual Net County Cost starting in FY2005-06.

A Net County Cost increase or discretionary revenue decrease such as this is well within the realm of possibility and could result from a variety of factors or combination of factors. For example, the Governor's proposal to eliminate RASCLEAP funding could be approved, reducing County revenues by approximately \$500,000 annually; property tax or other discretionary revenues could grow at rate that is less than the level assumed in the Baseline projections (every 1% change in property tax revenues equates to \$300,000); Realignment and Proposition 172 revenue could also grow at a lower rate than assumed in the Baseline Scenario; employee turnover, which has resulted in an historic vacancy rate of about 10% a year, could decrease, thus increasing salary and benefit costs; higher than anticipated rates of inflation or equity studies by our "comparable" jurisdictions could also result in higher salary and benefit costs, as could negotiation of new contracts with the County's unions; opening a new homeless shelter could increase operating costs; the Board may commit to General Fund investment in capital projects beyond the \$1 million a year included in these assumptions; state or federal funding for certain

programs could be reduced; a downturn in the economy could result in increased costs in various assistance programs and an increase in inflation could result in higher costs of doing business generally.

Revenue Increase/Expenditure Decrease Scenario: This scenario is designed to provide a measure of what the impact on the General fund might be of an increase in discretionary revenues and/or decrease in Net County Cost. To illustrate this impact, this scenario utilizes all of the assumptions in the Baseline Scenario except that it assumes a \$2,000,000 decrease in Net County Cost starting in FY2005-06.

A discretionary revenue increase or Net County Cost decrease such as this is also within the realm of possibility. For example, Realignment, Proposition 172 revenue and or certain discretionary revenues could grow at a higher rate than assumed in the Baseline Scenario; costs for the General Plan update or capital improvements could be lower than \$1 million in each of the next four years; salary savings could be greater than anticipated due to higher employee turnover rates.

#### Forecasts and Analysis

The results of the three forecasts are shown on the attached exhibits. In summary, the Baseline Scenario shows that, assuming that things generally stay the way they are in terms of staffing, revenue sources (except for known changes) and capital costs, the projected fund balance at the end of FY2008-09 should be in the area of \$15 million – a reduction of approximately \$24 million from the FY2004-05 beginning fund balance level. For budget purposes, by FY2008-09 it would then be necessary to use approximately \$10 million in fund balance to balance the budget and that would leave approximately \$8 million in fund balance to cover General Reserves and Designations (it is typically necessary to budget for a higher level of expenditures than actually occurs, since the budget includes a contingency and does not reflect all of the salary savings that occur during the year). This would probably be just barely enough to maintain a 5% reserve as called for in your Board's Budget Policies and would not allow for any designations. In addition, under this scenario, absent any major new revenue sources, it seems likely that it would not be possible to maintain General Fund supported programs at current levels in the 2009-10 fiscal year.

Under the Revenue Reduction/Expenditure Increase Scenario, the projected fund balance at the end of FY2008-09 would be approximately \$7 million. For budget purposes, however, by FY2008-09, there would not be sufficient fund balance and resources to maintain current program levels, even if all General Reserves are eliminated. And in fact, the fiscal situation in the later years of this forecast could be even more problematic than this. None of the Scenarios assume major new capital (or related debt service) costs, for example to provide for new or

remodeled correctional facilities as a result of the Comprehensive Correctional Master Plan study currently under way.

Under the Revenue Increase/Expenditure Decrease Scenario, it should be possible to make it through Fiscal Year 2008-09 and end the year with a fund balance of approximately \$23 million.

A projected FY2008-09 ending fund balance that ranges from \$7 million to \$23 million illustrates the sensitivity of such projections to the assumptions used in making them. And, in fact, the General Fund's actual fiscal condition in any future year could be better or worse than these numbers suggest, since actual circumstances over the next four years will likely differ from all of the scenarios.

At this point, then, all that we can conclude is that it will likely be necessary to spend down the General Fund's fund balance to balance the budget in future years and it will not be possible to continue reliance on fund balance to meet long-term needs. Absent any major program cost increases (beyond the normal cost of doing business), changes in state or federal funding formulae, a decision to backfill reductions in state or federal revenues or a significant downturn in the economy, it should be possible to maintain General Fund supported programs at current levels through at least the next two years (through FY2006-07). After that the situation becomes more problematic, given the trend of gradual decline in fund balance under all of the scenarios and the potential for large capital expenditures in the out years. This suggests that it would not be prudent to make major new on-going commitments of General Fund resources. On the other hand, these forecasts suggest that limited, one-time investments of resources might be appropriate, particularly if they are strategically targeted to enhance operational efficiency and achieve long-term cost savings.

These forecasts also suggest the need for a County Capital Improvement Plan (CIP) and Strategic Financial Plan. A CIP will provide a more realistic picture of what future capital costs will likely be. A Strategic Financial Plan will help set priorities for use of limited General Fund resources and establish a long term strategy for bringing revenues into balance with expenditures, while maintaining appropriate reserves. Staff is proposing to work on developing such plans over the next fiscal year. In addition, staff will be updating the Five Year General Fund Forecast on a regular basis to analyze whether the trends projected here are realistic or need to be revised.

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Attachments:

- Exhibit A – Baseline Scenario
- Exhibit B – Expenditure Increase/Revenue Decrease Scenario
- Exhibit C – Expenditure Decrease/Revenue Increase Scenario